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Methods of work of the Working Group on Arbitrary Detention*

I. Introduction

1. The methods of work take account of the specific features of the terms of reference of the Working Group on Arbitrary Detention under Commission on Human Rights resolutions 1991/42, 1992/28, 1993/36, 1994/32, 1995/50, 1996/28, 1997/50, 1998/41, 1999/37, 2000/36, 2001/40, 2002/42, 2003/31 and 2004/39, as well as Human Rights Council resolutions 6/4, 10/9, 15/18, 24/7 and 33/30. In resolution 1991/42, the Commission gave the Working Group the task not only of informing the Commission by means of a comprehensive report, but also of investigating cases of deprivation of liberty imposed arbitrarily.

II. Functioning of the Working Group

2. The Working Group was established by the Commission on Human Rights in its resolution 1991/42. The initial mandate of the Working Group was renewed by the Commission and the Human Rights Council. The Council assumed the mandate of the Commission in its decision 1/102, and it renewed the Working Group's mandate in its resolutions 6/4, 15/18, 24/7 and 33/30. The Working Group's mandate is considered for renewal every three years.

3. The Working Group is organized internally as follows:

(a) The Working Group shall elect, at its spring session, a Chair-Rapporteur and two Vice-Chairs for a term of one year, taking due account of the need for rotation among the geographical regions and the gender balance, among other considerations. They shall take office at the end of the same session. Each officer can be re-elected.

(b) The Chair-Rapporteur shall perform the functions conferred upon him or her by the resolution that creates or renews the mandate of the Working Group, the methods of work and the decisions of the Working Group. The Chair-Rapporteur shall represent the Working Group before the Human Rights Council, States and other relevant stakeholders. She or he shall chair the sessions of the Working Group.

* The present methods of work supersede those contained in document A/HRC/11/66.

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(c) One of the Vice-Chairs shall be the Working Group's focal point for individual complaints; the other shall be the focal point for follow-up on all actions taken by the Working Group;

(d) In the exercise of their functions, the Chair-Rapporteur and the Vice-Chairs shall remain under the authority of the Working Group. In the absence of the Chair-Rapporteur, one of the Vice-Chairs shall temporarily assume the assigned functions of the Chair-Rapporteur as required by the circumstances;

(e) Each of these three officers shall report fully to the Working Group at the beginning of each session on activities they have undertaken during the intersessional period, and on any activity undertaken during a session without the other members of the Working Group;

(f) The Working Group can appoint at any time a rapporteur on specific issues of interest.

4. The Working Group meets at least three times a year, for at least five to eight working days, generally in Geneva.

5. When the case under consideration or the country visit concerns a country of which one of the members of the Working Group is a national, or in other situations where there may be a conflict of interest, that member shall not participate in the discussion of the case, in the visit or in the preparation of the report on the visit.

6. During the course of its deliberations, when dealing with individual cases or situations, the Working Group renders opinions, which are listed in the annual report it submits to the Human Rights Council. The opinions of the Working Group are the result of consensus; where consensus is not reached, the view of a majority of the members of the Working Group is adopted as the view of the Working Group.

III. Implementation of the mandate of the Working Group

7. The mandate of the Working Group is to investigate cases of deprivation of liberty imposed arbitrarily. In the discharge of its mandate, the Working Group refers to the relevant international standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international instruments accepted by the States concerned, in particular the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967, the International Convention on the Elimination of All Forms of Racial Discrimination and, when appropriate, any other relevant standards, including the following:

(a) The Convention on the Rights of the Child;

(b) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(d) The Convention on the Rights of Persons with Disabilities;

(e) The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(f) The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(g) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

(h) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);

(i) The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

8. As a general rule, in dealing with situations of arbitrary deprivation of liberty within the meaning of paragraph 15 of resolution 1997/50, the Working Group shall refer, in the discharge of its mandate, to the following five legal categories:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

IV. Submission and consideration of communications

A. Submission of communications to the Working Group

9. Communications shall be submitted in writing and addressed to the secretariat, giving the family name, first name and address of the sender and (optionally) his or her telephone, telex and telefax numbers or e-mail address.

10. As far as possible, each case shall form the subject of a presentation indicating the circumstances of the arrest or detention and the family name, first name and any other information making it possible to identify the person detained, as well as the latter's legal status, particularly:

(a) The date and place of the arrest or detention or of any other form of deprivation of liberty and the identity of those presumed to have carried it out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;

(b) The reasons given by the authorities for the arrest, detention or deprivation of liberty;

(c) The legislation applied in the case;

(d) The action taken, including investigatory action or the exercise of internal remedies, by the administrative and judicial authorities, as well as the steps taken at the international or regional levels, and the results of such action or the reasons why such measures were ineffective or were not taken;

(e) An account of the reasons why the deprivation of liberty is deemed arbitrary;

(f) A report of all elements presented by the source that aim to inform the Working Group on the full status of the reported situation, such as the beginning of a trial;

the granting of provisional or definitive release; and changes of incarceration conditions or venue or of any other similar circumstances. An absence of information or an absence of a response by the source may lead the Working Group to terminate its consideration of the case.

11. In order to facilitate the Working Group's work, it is hoped that communications will be submitted using the model questionnaire available from the Working Group's secretariat. Communications shall not exceed 20 pages and any additional material, including annexes, exceeding that limit may not be taken into account by the Working Group.

12. Communications addressed to the Working Group may be received from the individuals concerned, their families or their representatives. Such communications may also be transmitted by Governments and intergovernmental and non-governmental organizations as well as by national institutions for the promotion and protection of human rights. In dealing with communications, the Working Group will give consideration to articles 9, 10 and 14 of the Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council.

13. In accordance with the provisions of paragraph 4 of Human Rights Commission resolution 1993/36, the Working Group may, on its own initiative, take up cases that might constitute arbitrary deprivation of liberty.

14. When the Working Group is not in session, the Chair-Rapporteur, or in his or her absence the Vice-Chairs (see para. 3 (c) and (d) above), may decide to bring the case to the attention of the Government.

B. Consideration of communications

15. In the interest of ensuring mutual cooperation, communications shall be brought to the attention of the Government and the reply of the latter shall be brought to the attention of the source of the communication for its further comments. They shall be transmitted by the Chair-Rapporteur of the Working Group or, if she or he is not available, by the Vice-Chairs (see para. 3 (c) and (d) above). In the case of Governments, the letter shall be transmitted through the Permanent Representative to the United Nations Office at Geneva. In the letter the Working Group shall request the Government to reply within 60 days, during which appropriate inquiries may be carried out by the Government so as to furnish the Working Group with the fullest possible information. In the letter the Working Group shall also inform the Government that the Working Group is authorized to render an opinion determining whether the reported deprivation of liberty was arbitrary or not. Replies shall not exceed 20 pages and any additional material, including annexes, exceeding that limit may not be taken into account by the Working Group. If a reply is not received from the Government within the time limit, the Working Group may render an opinion on the basis of the information submitted by the source.

16. If the Government desires an extension of the time limit, it shall inform the Working Group of the reasons for requesting one, so that it may be granted a further period of a maximum of one month in which to reply. Even if no reply has been received upon expiry of the time limit set, the Working Group may render an opinion on the basis of all the information it has obtained.

C. Action taken on communications

17. In the light of the information obtained, the Working Group shall take one of the following measures:

(a) If the person has been released, for whatever reason, following the referral of the case to the Working Group, the case is filed. The Working Group reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Working Group considers that the case is not one of arbitrary detention, it shall render an opinion to that effect. The Working Group can also make recommendations in this case if it considers it necessary;

(c) If the Working Group considers that further information is required from the Government or from the source, it may keep the case pending until that information is received;

(d) If the Working Group considers that the arbitrary nature of the detention is established, it shall render an opinion to that effect and make recommendations to the Government.

18. The opinions rendered by the Working Group shall be transmitted to the Government concerned. Forty-eight hours after their transmittal, they shall be communicated to the source. An advance unedited version of the opinion will be published online once the source has been notified.

19. The opinions rendered by the Working Group shall be brought to the attention of the Human Rights Council in its annual report.

20. Governments, sources and other parties should inform the Working Group of the follow-up action taken on the recommendations made by the Working Group in its opinion. This will enable the Working Group to keep the Human Rights Council informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.

D. Procedure for review of opinions

21. In exceptional circumstances, the Working Group may *proprio motu* reconsider its opinions if it becomes aware of new facts that, if known at the time of the decision, would have led the Working Group to a different outcome. The Working Group may also reconsider its opinions at the request of the Government concerned or the source under the following conditions:

(a) If the facts on which the request is based are considered by the Working Group to be entirely new and such as to have caused the Working Group to alter its decision had it been aware of them;

(b) If the facts had not been known or had not been accessible to the party originating the request;

(c) In a case where the request comes from a Government, on condition that the latter has observed the time limit for reply referred to in paragraphs 15-16 above;

V. Urgent action procedure

22. A procedure known as "urgent action" may be resorted to in the following cases:

(a) In cases in which there are sufficiently reliable allegations that a person is being arbitrarily deprived of his or her liberty and that the continuation of such deprivation constitutes a serious threat to that person's health, physical or psychological integrity or even to his or her life;

(b) In cases in which, even when no such threat is alleged to exist, there are particular circumstances that warrant an urgent action.

23. After having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals, which are of a purely humanitarian nature, in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

24. The Chair-Rapporteur, or in his or her absence the Vice-Chairs (see para. 3 (c) and (d) above), shall transmit the appeal by the most rapid means to the Minister for Foreign Affairs through the Permanent Mission of the country concerned.

VI. Country visits

25. For the purposes of completing its task, the Working Group frequently pays visits on official mission. The visits are prepared in collaboration with the Government, the United Nations agencies in the field and civil society representatives. The visits are an opportunity for the Working Group to engage in direct dialogue with the Government concerned and with representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the underlying reasons for arbitrary detention. An important part of these missions are visits to detention centres, including penitentiaries, prisons, police stations, detention centres for migrants and psychiatric hospitals.

26. When the Working Group receives an invitation from a Government to conduct a country visit, it responds by inviting the Permanent Representative of the State to the United Nations Office at Geneva to a meeting to determine the dates and terms of the visit. The secretariat of the Working Group initiates a dialogue with the parties involved in the visit with a view to taking all practical measures to facilitate the mission. The preparation for the visit is conducted in close cooperation with diplomatic authorities of the host country and United Nations agencies.

27. The Government must assure the Working Group that, during the visit, the Working Group will have the opportunity to conduct meetings with the highest authorities of the branches of the State (political, administrative, legislative and judicial authorities), that it will be able to visit penitentiaries, prisons, police stations, immigration detention centres, military prisons, detention centres for juveniles and psychiatric hospitals and that it will be able to meet with all the authorities and officials who affect the personal liberty of persons subjected to the jurisdiction of the host State. The Working Group shall also conduct meetings with international bodies and agencies as well as with non-governmental organizations, lawyers, bar associations and other professional associations of interest, national human rights institutions, diplomatic and consular representatives and religious authorities. Absolute confidentiality shall be guaranteed during the interviews between the Working Group and persons deprived of their liberty. The Government shall guarantee there will be no reprisals against persons interviewed by the Working Group.

28. The Working Group shall conduct at least two visits per year, and its delegation will be composed of at least two of its members.

29. At the end of its visit, the Working Group shall submit a preliminary statement to the Government, informing it about its preliminary findings. It shall inform the public of its findings by means of a press conference after debriefing the Government.

30. A report shall be prepared by the Working Group, and once adopted it shall be communicated to the Government of the country visited with a view to gathering its observations on factual and legal errors. The final report shall take into consideration the observations of the Government. It shall be published as an addendum to the annual report.

31. During the visit, members of the Working Group shall respect the legislation of the host country.

32. Two years after its visit, the Working Group shall request the Government to present a report on the implementation of the recommendations formulated in the mission report. All of the stakeholders involved in the visit shall be informed during the follow-up procedure and shall submit their observations. If necessary, the Working Group shall request a follow-up visit to the country concerned.

VII. Coordination with other human rights mechanisms

33. In order to strengthen the good coordination that already exists between the various United Nations bodies working in the field of human rights (see Commission on Human Rights resolution 1997/50, para. 1 (b)), the Working Group takes action as follows:

(a) If the Working Group, while examining allegations of violations of human rights, considers that the allegations could be more appropriately dealt with by another working group or special rapporteur, it will refer the allegations to the relevant working group or special rapporteur within whose competence they fall, for appropriate action;

(b) If the Working Group receives allegations of violations of human rights that fall within its competence as well as within the competence of another thematic mechanism, it may consider taking appropriate action jointly with the working group or special rapporteur concerned;

(c) If communications concerning a country for which the Human Rights Council has appointed a special rapporteur, or another appropriate mechanism with reference to that country, are referred to the Working Group, the latter, in consultation with the rapporteur or the person responsible, shall decide on the action to be taken;

(d) If a communication addressed to the Working Group is concerned with a situation that has already been referred to another body, action shall be taken as follows:

(i) If the function of the body to which the matter has been referred is to deal with the general development of human rights within its area of competence (e.g. most of the special rapporteurs, representatives of the Secretary-General, independent experts), the Working Group shall retain competence to deal with the matter;

(ii) However, if the body to which the matter has already been referred has the function of dealing with individual cases (e.g. the Human Rights Committee and other treaty bodies), the Working Group shall transmit the case to that other body if the person and facts involved are the same.

34. The Working Group shall not make visits to countries for which the Human Rights Council has already appointed a country rapporteur or another appropriate mechanism with reference to that country, unless the special rapporteur or the person responsible considers the visit by the Working Group to be useful.

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Report of the Working Group on Enforced or Involuntary Disappearances*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on Enforced or Involuntary Disappearances, prepared pursuant to Council resolution 7/12. The Working Group was established by resolution 20 (XXXVI) of the Commission on Human Rights and its mandate was most recently extended by the Council in its resolution 27/1.

The mandate of the Working Group is to assist the families of disappeared persons in ascertaining the fate and whereabouts of their disappeared relatives, to monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance and to provide States with assistance in the prevention and eradication of enforced disappearances.

Since its inception in 1980, the Working Group has transmitted a total of 56,363 cases to 112 States. The number of cases under active consideration stands at 45,120 in a total of 91 States. During the reporting period, 130 cases were clarified.

In its report, the Working Group provides information on activities carried out and communications and cases examined from 19 May 2016 to 17 May 2017. The report includes a section with the main findings and observations on the issue of enforced disappearances in the context of migration, the subject of a thematic study submitted as an addendum to the present report (see A/HRC/36/39/Add.2).

* The annexes to the present report are circulated as received, in the language of submission only.

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Report of the Working Group on Enforced or Involuntary Disappearances

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I. Introduction

1. The Working Group on Enforced or Involuntary Disappearances was the first United Nations human rights thematic mechanism to be established with a universal mandate, by the Commission on Human Rights resolution 20 (XXXVI). The mandate was most recently extended by the Human Rights Council in its resolution 27/1.

2. The primary task of the Working Group is to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared. In that humanitarian capacity, the Working Group serves as a channel of communication between family members of victims of enforced disappearance and other sources reporting cases of disappearances, and the Governments concerned.

3. Following the adoption of the Declaration on the Protection of All Persons from Enforced Disappearance (General Assembly resolution 47/133), the Working Group was entrusted with monitoring the progress of States in fulfilling their obligations derived from the Declaration. The Human Rights Council, in its resolution 7/12, encouraged the Working Group to provide assistance in the implementation by States of the Declaration and of existing international rules.

4. The present report contains information on the activities of and communications and cases examined by the Working Group from 19 May 2016 to 17 May 2017. A summary of the decisions on individual cases taken by the Working Group and communications transmitted to the States concerned during the reporting period is presented in a table (see section III).

5. Since its inception, the Working Group has transmitted a total of 56,363 cases to 112 States. The number of cases under active consideration that have not yet been clarified, closed or discontinued stands at 45,120 in a total of 91 States. During the reporting period, 130 cases were clarified.

II. Activities of the Working Group from 19 May 2016 to 17 May 2017

A. Activities

6. During the period under review, the Working Group held three sessions: its 110th session, from 19 to 23 September 2016 (see A/HRC/WGEID/110/1); its 111th session, from 6 to 10 February 2017 (see A/HRC/WGEID/111/1); and its 112th session, from 8 to 17 May 2017 (see A/HRC/WGEID/112/1). The reports on the sessions should be considered complements to the present report.

7. During the 110th session, Houria Es Slami was confirmed as Chair-Rapporteur of the Working Group and Bernard Duhaime as Vice-Chair. Both had been appointed during the 107th session. Ariel Dulitzky completed his term as member of the Working Group on 30 April 2017. A new member, Luciano Hazan, was appointed in March 2016 to replace Mr. Dulitzky as of 1 May 2017.

8. On 15 September 2016, the Chair-Rapporteur presented the report of the Working Group covering the period from 16 May 2015 to 18 May 2016, and its addenda, to the Human Rights Council at its thirty-third session, and participated in the interactive dialogue with States.

9. Between 6 and 10 June 2016, the Vice-Chair represented the Working Group during the twenty-third annual meeting of the special procedure mandate holders of the Human Rights Council.

10. On 24 October 2016, the Chair-Rapporteur addressed the General Assembly at its seventy-first session and participated in the interactive dialogue with Member States.

11. The Working Group continues its practice of holding one session per year outside Geneva. It held its 111th session in Seoul. The Working Group is grateful to the Government of the Republic of Korea for the opportunity.

12. On 17 February 2017, the Vice-Chair participated in a high-level panel of the General Assembly on the occasion of the tenth anniversary of the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance.

13. On 23 and 24 March 2017, Mr. Dulitzky carried out a technical visit to Chile to follow up on the implementation of the recommendations made by the Working Group after its visit to Chile in 2012.

14. During the reporting period, all the members of the Working Group carried out a number of activities on the issue of enforced disappearances, including by participating in conferences, consultations, seminars, training events, workshops and lectures, organized by Governments and civil society organizations.

15. The Working Group is thankful for the continuous support, including through voluntary contributions, provided by donor States, notably Argentina, France, Japan and the Republic of Korea.

B. Meetings

16. During the period under review, representatives of the Governments of Iraq (111th), Japan (110th, 111th and 112th), Peru (110th), Portugal (112th) and the Republic of Korea (111th) attended the sessions of the Working Group. A number of informal meetings were also held with representatives of other States. The Working Group expresses its appreciation to those Governments for the meetings and emphasizes the importance of cooperation and dialogue.

C. Communications

17. During the reporting period, the Working Group transmitted 1,094 new cases of enforced disappearance to 36 States.

18. The Working Group transmitted 260 of the above-mentioned cases under the urgent action procedure[1] to 23 States.

19. The Working Group clarified 130 cases in Argentina (1), Bahrain (3), Bangladesh (1), Egypt (88), Jordan (1), Kuwait (1), the Lao People's Democratic Republic (3), Lebanon (1), Libya (1), Mexico (3), Nigeria (1), the State of Palestine (1), Pakistan (8), the Sudan (5), Turkey (5), Ukraine (1) and the United Arab Emirates (6). Of the 130 cases, 52 were clarified on the basis of information provided by the Governments and 78 on the basis of information provided by the sources.

20. The Working Group transmitted 21 prompt intervention communications addressing allegations of harassment of and/or threats to human rights defenders and relatives of disappeared persons in Algeria (2), Burundi (1), Egypt (1), El Salvador (1), Ethiopia (2), India (3), Iran (Islamic Republic of) (3), Kenya (1), Mexico (3), Morocco (1), South Sudan (1) and Sri Lanka (2).

21. It transmitted 17 urgent appeals concerning persons who had been arrested, detained, abducted or otherwise deprived of their liberty or who had been forcibly disappeared or were at risk of disappearance in Bangladesh (1), Chad (1), China (4), Iran (Islamic Republic of) (2), Italy (1), the Lao People's Democratic Republic (1), Pakistan (1), the Sudan (3), Thailand (2), Turkey (1) and the United Arab Emirates (1).

[1] The urgent action procedure is used in cases of enforced disappearances that have occurred within three months prior to the receipt of a report by the Working Group.

22. The Working Group transmitted nine general allegations related to obstacles in the implementation of the Declaration to the Governments of Bangladesh (1), Eritrea (1), Kenya (1), Indonesia (1), Iran (Islamic Republic of) (1), Myanmar (1), Mexico (2) and the Russian Federation (1).

23. It also transmitted 10 other letters addressing issues related to enforced disappearances to the Governments of Argentina (1), Bolivia (Plurinational State of) (1), Colombia (1), the Democratic Republic of the Congo (1), Libya (1), Mozambique (1), Nigeria (1) and Sri Lanka (2), as well as to the European Union (1).

D. Country visits

24. The Working Group visited Albania from 5 to 12 December 2016 (see A/HRC/36/39/Add.1). The Working Group thanks the Government of Albania for the invitation and for the cooperation extended to it before, during and after its visit. It encourages the Government to fully implement the recommendations contained in its report on the visit.

25. The Working Group also thanks the Governments of the Gambia, the Sudan and Tajikistan, which have invited it to visit their countries during the reporting period. The visit to the Gambia took place from 12 to 19 June 2017 and the visit to the Sudan is scheduled to take place from 20 to 29 November 2017. The Working Group also thanks the Government of Ukraine, which has in principle accepted its visit for the first semester of 2018.

26. During the reporting period, the Working Group requested visits to the Democratic Republic of the Congo and Turkmenistan.

27. In addition, the Working Group reiterated its requests, to which it still has not received a positive response, to visit Bangladesh, Bahrain, Belarus, Burundi, China, Egypt, India, Indonesia, Kenya, Lebanon, Nepal, Nicaragua, the Philippines, the Russian Federation, Rwanda, South Africa, the Syrian Arab Republic, Thailand, the United Arab Emirates, Uzbekistan and Zimbabwe. The Working Group invites all States that have received a request for a visit by the Working Group to respond favourably to it, in accordance with Human Rights Council resolution 21/4.[2]

28. The Working Group once again recalls that the Islamic Republic of Iran agreed to a visit by the Working Group in 2004, more than a decade ago, which was delayed at the request of the Government. The Working Group calls upon the Government to set the dates for the visit. Similarly, the Working Group reiterates its regret that it has yet to visit Algeria, in spite of an invitation extended in 2014.

29. In February 2016, the Government of South Sudan invited the Working Group to visit. However, it did not respond to a subsequent letter from the Working Group sent in April 2016, proposing two dates for a visit to the country in the last quarter of 2017. The visit to Libya, postponed in May 2013 for security reasons, is still pending.

E. Follow-up reports and other procedures

30. The Working Group has prepared a follow-up report on the implementation of recommendations made following its visits to Chile (see A/HRC/22/45/Add.1) and Spain (see A/HRC/27/49/Add.1). The Working Group thanks both Governments for the cooperation and encourages them to implement the outstanding recommendations. The Working Group is also grateful to the civil society organizations and other stakeholders who provided information for those reports.

[2] See annex I for information on requests made and invitations extended.

F. Press releases and statements

31. On 1 June 2016, the Working Group issued a press release[5] welcoming the decision by the Congress of Peru to approve the draft law on the search for disappeared persons.

32. On 15 July 2016, the Working Group, jointly with other mandate holders, welcomed the decision of the Supreme Court of El Salvador to declare unconstitutional the amnesty law of 1993, which allowed crimes against humanity and war crimes, as well as serious or systematic violations of human rights and international humanitarian law committed during the internal armed conflict, to be treated with impunity.[6]

33. On 19 August 2016, the Working Group issued a press release, jointly with other mandate holders, urging the Government of Turkey to uphold its obligations under international human rights law, even during the state of emergency declared after the attempted coup.[7]

34. On 23 August 2016, the Working Group issued a press release, jointly with other mandate holders, urging the Government of Bangladesh to annul the death sentence against a senior member of the Jamaat-e-Islami opposition party, Mir Quasem Ali, and to retry him in compliance with international standards. They also expressed alarm at reports that Mr. Ali's son, who was also a member of his legal defence team, Mir Ahmed Bin Quasem, was abducted from his home on 9 August 2016 by Bangladeshi security forces, two weeks before his father's review hearing.[8]

35. On 26 August 2016, the Working Group issued a press release, jointly with the Committee on Enforced Disappearances, on the occasion of the International Day of the Victims of Enforced Disappearances, calling on States to prevent and eradicate enforced disappearances, including short-term enforced disappearances, and to ensure that relatives of persons deprived of their liberty are informed accurately and promptly of their detention.[9]

36. On 15 September 2016, on the occasion of the presentation by the Chair-Rapporteur of the Working Group's annual report to the Human Rights Council, the Working Group issued a press release warning States that enforced disappearances were on the rise and expressing deep concern and frustration for what it defined as "a very frightening trend".[10] The Working Group also issued separate press releases in relation to its reports on the visits to Peru,[11] Sri Lanka[12] and Turkey.[13]

37. On 23 September 2016, at the conclusion of its 110th session, the Working Group issued a statement.[14]

38. On 10 October 2016, the Working Group issued a press release, jointly with other mandate holders, urging the Ethiopian authorities to end their violent crackdown on peaceful protests and calling upon the Government to allow an international commission of inquiry to investigate the protests held and the violence used against peaceful demonstrators.[15]

39. On 19 October 2016, the Working Group issued a press release, jointly with other mandate holders, calling on the Government of India to immediately release human rights defender Khurram Parvez, who had been arrested in September 2016 for alleged activities

[5] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20046&LangID=E.
[6] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20275&LangID=E.
[7] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394&LangID=E.
[8] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20493&LangID=E.
[9] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20416&LangID=E.
[10] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20505&LangID=E.
[11] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20501&LangID=E.
[12] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20499&LangID=E.
[13] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20500&LangID=E.
[14] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20573&LangID=E.
[15] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20663&LangID=E.

against the public order. Mr. Parvez is the coordinator of the Jammu Kashmir Coalition of Civil Society and the Chair of the Asian Federation against Involuntary Disappearances.[14] He was subsequently released on 10 November 2016.

60. On 24 October 2016, a press release was issued on the occasion of a presentation by the Chair-Rapporteur of the Working Group to the General Assembly, in which States were called upon to place the eradication of enforced disappearance at the top of their agenda and engage seriously in the fight against enforced disappearance.[15]

61. On 12 December 2016, the Working Group issued a press release[16] and a statement,[17] at the conclusion of its visit to Albania, calling upon the Government to adopt a comprehensive State policy that fully recognize[s] past crimes, including enforced disappearances, and adequately deals with all aspect[s] related to truth, justice, reparation, memory and guarantees of non-repetition.

62. On 20 December 2016, the Working Group issued a press release commending the decision of the States parties to the International Convention for the Protection of All Persons from Enforced Disappearance to extend the mandate of the Committee on Enforced Disappearances.[18]

63. On 6 February 2017, the Working Group issued a press release, jointly with other mandate holders, on the situation of human rights defenders in Burundi, notably the allegation of a steep increase in cases of enforced disappearances.[19]

64. On 14 February 2017, at the conclusion of its 111th session, the Working Group issued a statement.[20]

65. On 17 February 2017, the Working Group issued a press release calling upon the Governments of Kenya and South Sudan to reveal the fate of two South Sudanese men who had been abducted in Kenya.[21]

66. On 24 February 2017, the Working Group, jointly with other mandate holders, issued a press release calling upon the Government of Bangladesh to urgently halt the increasing number of enforced disappearances in the country.[22]

67. On 28 March 2017, the Working Group, jointly with other mandate holders, issued a press release urging the Government of the United Arab Emirates to immediately reveal the whereabouts of renowned human rights defender Ahmed Mansour.[23]

G. Enforced disappearances in the context of migration

68. The Working Group has presented a specific thematic report on the issue of enforced disappearances in the context of migration (A/HRC/30/39/Add.2).

69. During its 105th session, and in its 2015 annual report, the Working Group announced that it would address diverse forms of enforced disappearances in the context of migration to determine the cause of the problem and to specify the obligations of the States to assist the victims. A number of preliminary observations were already included in its 2016 annual report (see A/HRC/31/56, paras. 46–80). On 9 February 2017, an expert meeting was held in Seoul, on the sidelines of the 111th session of the Working Group. In addition, a number of written contributions were received from various stakeholders.

[14] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20997&LangID=E.
[15] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20792&LangID=E.
[16] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21017&LangID=E.
[17] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21009&LangID=E.
[18] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21059&LangID=E.
[19] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21145&LangID=E.
[20] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21176&LangID=E.
[21] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21195&LangID=E.
[22] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21229&LangID=E.
[23] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21409&LangID=E.

including States, in response to a questionnaire sent in December 2016.[24] The Working Group is grateful to the States, United Nations agencies, non-governmental organizations and individuals who participated in the process.

50. The phenomenon of enforced disappearance of migrants is a modern-day reality and should not be ignored or underestimated. The increasingly precarious movements of migrants, including through long and perilous journeys associated, among other things, with the often increasingly rigid migratory policies of States focused on deterrence, have created a situation which exposes migrants to heightened risks of becoming victims of human rights violations, including enforced disappearances.

51. As outlined in the report, there is a direct link between enforced disappearance and migration, either because individuals migrate as a consequence of the threat or risk of being subjected to enforced disappearances in their country or because they disappear during their migratory journey or in the country of destination. This may occur either as a result of abduction for political or other reasons, or in the context of detention or deportation processes or as a consequence of smuggling and/or trafficking. However, States and the international community as a whole do not seem to be devoting the necessary attention to this issue. In addition, owing to both its nature and its transnational character States are turning a blind eye and prefer to transfer the blame elsewhere, be it to another State or to a criminal group.

52. Where the disappearances of migrants are carried out primarily by non-State actors but with the direct or indirect involvement of State authorities, those acts would clearly be characterized as enforced disappearances. There are also other cases in which migrants disappear as an involuntary but direct consequence of the actions of the State, for instance in the case of pushback, at land or at sea. While these may not, strictly speaking, be enforced disappearances, they may nevertheless trigger State responsibility in the context of the Declaration on the Protection of All Persons from Enforced Disappearance.

53. Thus, in view of the gravity and complexity of this phenomenon, it is essential that each State take this problem seriously and urgently strengthen measures to prevent and combat it at the national level. In addition, given its transnational character, States should reinforce cooperation with other States as well as with relevant international organizations at the regional and global levels.

54. In the light of the foregoing, the Working Group makes the following recommendations to States.

1. General

Migration as a consequence of enforced disappearance

55. States should consider the risk or threat of being subjected to enforced disappearance as a form of persecution falling within the scope of the principle of non-refoulement and grant refugee status to persons who migrate to flee from such conduct, while also taking all necessary measures to ensure that they are not the subject of refoulement.

Enforced disappearance of migrants

56. States should:

[24] The responding States were El Salvador, Germany, Ireland, Japan, Kazakhstan, Mexico, Morocco, Portugal, Serbia, Sweden and Venezuela (Bolivarian Republic of). Written contributions were also received from the following organizations: Groupe antiraciste de défense et d'accompagnement des étrangers et migrants; Fundación para la Justicia y el Estado Democrático de Derecho; Regional Mixed Migration Secretariat; and Alternative Espace Citoyen. Kimio Yakushiji, on behalf of the Committee on Enforced Disappearances, also contributed.

(a) Gather, compile and systematize all the information in relation to all individuals who go missing in, or transiting through, their countries. This information should also be systematically shared with bordering countries as well as with relevant international and/or regional organizations;

(b) Intensify cooperation — bilateral and multilateral — with other States and international organizations in the areas of identification, search, data collection, prevention, investigation and prosecution.

2. Prevention

57. In accordance with article 8 of the Declaration, States should prohibit, in both in legislation and practice:

(a) The expulsion, return (refoulement) or extradition of migrants to another State where there are substantial grounds to believe that they would be in danger of enforced disappearance. Any return must be the subject of careful individual assessment and follow due process, including the right to challenge the decision to expel/return. For the purpose of determining whether there are grounds for such challenges, the competent authorities should take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, in accordance with article 8 (2) of the Declaration;

(b) The pushback of migrants to any country where they would be in danger of enforced disappearance.

58. In this connection, States should also:

(a) Carefully consider, when designing them, the impact that migration regulations, policies and practices may have, and in particular assess the possible consequence of compelling migrants to resort to smuggling networks and thereby falling prey to trafficking networks, thus contributing to heightened risks of becoming victims of human rights violations, including enforced disappearances;

(b) Better monitor newly identified migratory routes — both by land and by sea — with a view to saving lives and upholding human rights in order to avoid as much as possible the disappearances of migrants during their journey;

(c) Take all possible measures to sanction criminal organizations which abuse or exploit migrants, notably trafficking networks, and adequately investigate any allegation of involvement, collusion or acquiescence of State authorities in these criminal acts, which may end in the disappearance of migrants;

(d) Strive to end immigration detention and never detain migrant children based on their status or that of their parents. If detention of adult migrants is absolutely necessary as a measure of last resort, proportionate and justified in law, States should hold migrants deprived of liberty in an officially recognized place of detention and make sure that their detention is formally registered, including with accurate information on their detention and place or places of detention, and independently monitored;

(e) In all circumstances allow migrant detainees to communicate with their relatives and lawyers or representatives, and always inform them of their right to communicate with the consular authorities of their country of origin;

(f) Formally document — and monitor, when possible — all returns of migrants and ensure that they are carried out in accordance with international standards in order to avoid disappearances during those processes, including temporary disappearances;

(g) When deprived of liberty, release all migrants in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability to fully exercise fully their rights are assured.

3. Search for disappeared migrants

59. States should:

(a) Take all necessary measures to search for and locate disappeared migrants by using all means at their disposal, including forensic investigative resources, and incorporate ante-mortem information in a centralized database;

(b) Investigate whether clandestine graves or other places where bodies may be concealed exist in migratory transit areas, and establish a register of found corpses, documenting the circumstances of the discovery;

(c) Respect international standards for all exhumations of mass graves of migrants and the identification processes undertaken thereafter;

(d) Consider facilitating, including by the issuance of visas, the arrival of relatives of the disappeared implicated in the search for their loved ones.

4. Investigation, criminalization and prosecution

60. States should:

(a) Investigate all cases of potential enforced disappearance as such from the outset and not exclude, a priori, the fact that they may in fact be enforced disappearances;

(b) Carry out all investigative efforts with the cooperation of the authorities of all States involved, as is normally the case for all criminal acts having a transnational character;

(c) Criminalize all acts of enforced disappearance, including enforced disappearances of migrants, which should be punished by appropriate penalties, taking into account their extreme seriousness;

(d) Take any appropriate action to bring to justice all persons presumed responsible for an act of enforced disappearance of migrants when they are found to be within their jurisdiction or under their control, unless those persons have been extradited to another State wishing to exercise jurisdiction.

5. Protection and right to an effective remedy

61. States should:

(a) Ensure a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of migrants whose whereabouts are unknown;

(b) Ensure the right of migrants to have recourse — with their informed consent — to the protection and assistance of the consular or diplomatic authorities of their State of origin if their rights are violated, including the right of the families of disappeared migrants to be assisted in the search for their whereabouts;

(c) Promptly initiate an appropriate investigation if a mass grave of migrants is discovered and refrain from taking any measures that could derail or delay the investigation;

(d) Provide redress and ensure the right to adequate compensation, including the means for as complete a rehabilitation as possible, for all victims. In the event of the death of a migrant as a result of an act of enforced disappearance, the family members should also be entitled to compensation.

6. International cooperation

62. Given the transnational nature of the enforced disappearance of migrants, States should carry out all investigative efforts, both for the search for the migrants and for the prosecution of those presumed responsible, duly cooperating with the authorities of all States involved and with relevant international organizations.

III. Decisions on individual cases taken by the Working Group and communications transmitted to the States concerned during the reporting period[25]

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by:		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Afghanistan	3						3								
Albania	1						1								
Algeria	3 139		40				3 179	2				1			
Angola	2						2								
Argentina[26]	3 244		1	1		157	3 241				1				1
Bahrain	4	3			3		4								
Bangladesh	34	3	13		1		49		1	1					
Belarus	3						3								
Bhutan[27]	5						0								
Bolivia (Plurinational State of)	28						28				1				

[25] Urgent actions are cases of enforced disappearances that have occurred within three months prior to the receipt of a report by the Working Group; or cases of enforced disappearances that have occurred prior to the three-month limit, but within one year prior to the receipt of a report by the Working Group, provided that there is a link with a case that occurred within the three-month period. Standard cases are cases of enforced disappearances that have occurred prior to the three-month limit. Prompt intervention letters concern cases of intimidation, persecution or reprisal against families of disappeared persons, witnesses, lawyers, human rights defenders and other individuals concerned with disappearances. Urgent appeals concern allegations of enforced disappearances; or allegations regarding persons deprived of liberty who are at risk of being disappeared. General allegations concern alleged obstacles encountered in the implementation of the Declaration.

[26] The Working Group decided at its 110th session to transfer three cases from Argentina to Uruguay.

[27] The Working Group decided at its 111th session to transfer five cases from Bhutan to India.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by:		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Brazil	13						13								
Burundi	53	2	3				58	1							
Cambodia	1						1								
Cameroon	14						14								
Central African Republic	3						3								
Chad	23						23		1						
Chile	784		1				785								
China	41	2					43		4				3*		
Colombia	973						973				1			1	
Congo	89						89								
Democratic People's Republic of Korea	94		73				167								
Democratic Republic of the Congo	47		1				48				1				
Dominican Republic	2						2								
Ecuador	5						5								
Egypt[28]	226	101	21	43	45	46	258	1						1	

[28] The Working Group determined during its 110th session that two cases were duplicates and subsequently expunged them from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by:		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
El Salvador	2 282						2 282	1							
Equatorial Guinea	8						8								
Eritrea	62						62			1					
Ethiopia	112		1				113	2							
France	1						1								
Gambia	4						4								
Greece	1						1								
Guatemala	2 897						2 897								1
Guinea	37						37								
Guyana	1						1		0						
Haiti	38						38								
Honduras	130						130								
India[29]	354		9				368	3				2			
Indonesia	163						163			1					
Iran (Islamic Republic of)	524	3	1				528	3	2	1					
Iraq	16 413		3				16 416								
Israel	2						2								
Italy	0						0		1				1		
Jordan	4				1		3								

[29] The Working Group decided at its 111th session to transfer five cases from Bhutan to India.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by:		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Kenya	72		5				77	1							
Kuwait	2				1		1								
Lao People's Democratic Republic	2	3		3			2		1						
Lebanon	313	1			1		313								
Libya	18	2	14		1		33				1				
Malaysia	0	1					1								
Maldives	1						1								
Mauritania	4						4								
Mexico	378	1	1		3		377	3		2		2			
Morocco	96		44				140	1				1			
Mozambique	2	1					3				1				
Myanmar	2						2			1					
Namibia	2						2								
Nepal	461		9				470								
Nicaragua	103						103								
Nigeria	0	1			1		0				1				
Oman	1						1								
Pakistan	511	119	101	1	7	109	723		1						
Peru	2 365						2 365								
Philippines	625						625								
Republic of Korea	3						3								

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by:		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Russian Federation	480	1	327				808			1				1	
Rwanda	23						23								
Saudi Arabia	5						5								
Seychelles	3						3								
Somalia	1						1								
South Africa	1						1								
South Sudan	2						2	1							
Spain	7						7								
Sri Lanka	5 758		101				5 859	2			2				
Sudan	174	5			5		174		3				2		
Syrian Arab Republic	179	2	37			1	218								
Tajikistan	3						3								
Thailand	82						82		1						
Timor-Leste	428						428								
Togo	10						10								
Tunisia	2		10				12								
Turkey[30]	78	4	18	3	2		94		1				1		
Turkmenistan	3	1					4								
Uganda	15						15								

[30] The Working Group determined during its 111th session that one case was a duplicate and subsequently expunged it from the records

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by:		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Ukraine	6				1		5								
United Arab Emirates	10	1		1	5		5		1				1		
United States of America	4						4								
Uruguay[31]	17						20								
Uzbekistan	7						7								
Venezuela (Bolivarian Republic of)	15	1					16						1		
Viet Nam	1						1								
Yemen	11	1					12								
Zimbabwe	5						5								
State of Palestine	4	1			1		4								

[31] The Working Group decided at its 110th session to transfer three cases from Argentina to Uruguay.

IV. Observations

63. In addition to the observations formulated in its post-session documents (see paragraph 6 above), the Working Group makes the following country-specific observations based on the cooperation received and on significant developments regarding its mandate during the reporting period.

Algeria

64. The Working Group reiterates its disappointment (see A/HRC/30/38, para. 58, and A/HRC/33/51, para. 82) that, in spite of an official communication received in February 2014 in which the Government invited the Working Group to visit Algeria during the second semester of 2014, it has not accepted the different dates offered by the Working Group. The Working Group continues to hope that it can soon be allowed to conduct a visit to the country.

Bangladesh

65. The Working Group is concerned by the fact that it continues to receive new reports of cases of alleged enforced disappearances in Bangladesh (see paragraph 46 above) and by the lack of replies to the cases and communications transmitted. The Working Group stresses that, as provided for in article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, no circumstances whatsoever may be invoked to justify enforced disappearances and that, according to article 10 (2), accurate information on the detention of such persons and their place or places of detention, including transfers, should be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information.

66. The Working Group reiterates its regret that no information has been received from the Government in connection with two general allegations transmitted on 4 May 2011 concerning the alleged frequent use of enforced disappearance as a tool by law enforcement agencies, paramilitary and armed forces to detain and even extrajudicially execute individuals (see A/HRC/22/45 and Corr.1, para. 33, and A/HRC/30/38, para. 61); and on 9 March 2016, concerning the reportedly alarming rise in the number of cases of enforced disappearance in the country (see A/HRC/WGEID/108/1, para. 6). The Working Group invites the Government to reply to its last general allegation, transmitted on 22 February 2017, concerning allegations of grave human rights abuses and violations committed by the Bangladesh Security and Intelligence Forces as well as Law Enforcement Authorities (see A/HRC/WGEID/111/1, para. 24 and annex II).

67. On 12 March 2013, the Working Group requested an invitation to visit the country. No response has been received yet from the Government, in spite of reminders sent on 27 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Burundi

68. The Working Group continues to be concerned (see A/HRC/33/51, paras. 83–86) about the situation of violence and instability in Burundi, which may facilitate the occurrence of enforced disappearances. It reiterates article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

69. On 27 May 2009, the Working Group requested an invitation to visit the country. The Working Group regrets the reply received on 27 March 2017 declining to issue an invitation.

Chile

70. The Working Group has prepared a follow-up report on the implementation of recommendations made after its visit to Chile (A/HRC/22/45/Add.1). The Working Group thanks the Government of Chile for cooperating with it in producing the follow-up report, part of which was on a technical visit carried out by a member on 23 and 24 March 2017 (see paragraph 13 above). It hopes that the recommendations contained in the report will be duly implemented.

China

71. The Working Group is concerned about the fact that it continues to receive reports of individuals detained in China who have been placed under investigation (see A/HRC/WGEID/107/1, para. 24, A/HRC/WGEID/108/1, para. 28, A/HRC/WGEID/111/1, para. 30, and A/HRC/WGEID/112/1, para. 26) but whose exact whereabouts remain unknown. The Working Group reiterates that such cases of secret detention are a form of enforced disappearance and urges the Government of China to disclose the fate and whereabouts of all detained persons, regardless of the nature of the charges against them. The Working Group reiterates that accurate information on the detention of persons deprived of their liberty and their place or places of detention, including transfers, should be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (article 10 (2) of the Declaration on the Protection of All Persons from Enforced Disappearance).

72. The Working Group is also concerned by reports of the continued practice of repatriating individuals who have been detained by the Chinese authorities after fleeing the Democratic People's Republic of Korea. Persons returned to the Democratic People's Republic of Korea risk suffering gross human rights violations, including enforced disappearance (see A/HRC/WGEID/112/1, para. 29). The Working Group recalls article 8 (1) of the Declaration on the Protection of All Persons from Enforced Disappearance, according to which no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he or she would be in danger of enforced disappearance.

73. On 19 February 2013, the Working Group requested an invitation to visit the country. No response has been received yet from the Government, in spite of reminders sent on 2 September 2013, 28 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Democratic People's Republic of Korea

74. The Working Group is concerned about the lack of cooperation demonstrated by the Government of the Democratic People's Republic of Korea through the identical replies received in recent years in relation to the transmitted cases. The Working Group is concerned in particular by the fact that the Government, instead of cooperating with the Working Group in relation to the very serious allegations of grave and systematic enforced disappearances in the country, has accused the Working Group of being partial and of being involved in an alleged political plot against the Democratic People's Republic of Korea. The Working Group firmly reiterates that it operates while maintaining the highest levels of objectivity, independence and impartiality.

75. The Working Group reiterates its previous call to the Security Council to consider referring the situation in the Democratic People's Republic of Korea to the International Criminal Court (see A/HRC/27/49, para. 72).

76. On 22 May 2015, the Working Group requested an invitation to visit the country and sent a reminder on 18 November 2016. It hopes that a positive reply will be received soon.

Democratic Republic of the Congo

77. The Working Group is gravely concerned about the situation in the Democratic Republic of the Congo, particularly in the Kasaï regions, which may facilitate the occurrence of enforced disappearances. It emphasizes that, as provided in article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, no circumstances whatsoever may be invoked to justify enforced disappearances.

78. On 17 May 2017, the Working Group requested an invitation to visit the country. It hopes that a positive reply will be received soon.

Egypt

79. The Working Group thanks the Government for its high number of replies, which continue to demonstrate the Government's commitment to engaging with the Working Group and have allowed it to clarify a high number of cases. It remains concerned, however, about the fact that, during the reporting period, it has had to transmit to the Government 101 new cases under its urgent action procedure (see A/HRC/WGEID/110/1, paras. 38-45, A/HRC/WGEID/111/1, paras. 40-49, and A/HRC/WGEID/112/1, paras. 38-45). It reiterates that accurate information on the detention of persons deprived of their liberty and their place or places of detention, including transfers, should be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (article 10 (2) of the Declaration on the Protection of All Persons from Enforced Disappearance).

80. On 30 June 2011, the Working Group requested an invitation to visit the country. No response has been received yet from the Government, in spite of reminders sent on 8 November 2012, 18 September 2013, 27 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Eritrea

81. The Working Group regrets its total lack of interaction with the Government of Eritrea. It also notes with concern the general allegation transmitted on 21 March 2017 in relation to the alleged widespread and systematic human rights violations, including enforced disappearances, committed throughout the country over the past 25 years (see A/HRC/WGEID/111/1, para. 52 and annex II).

82. The Working Group endorses the call made by the commission of inquiry on human rights in Eritrea for the Security Council to consider referring the situation in Eritrea to the International Criminal Court (see A/HRC/32/47, para. 132).

Gambia

83. The Working Group commends the Government of the Gambia for having the political will to address past gross violations of human rights, including enforced disappearances. The Working Group reiterates its support for the steps already taken and encourages the authorities to take heed of the preliminary observations made at the end of the Working Group's visit in June 2017.[32]

84. The Working Group stresses that all measures dealing with truth, justice and reparations should be designed and implemented simultaneously and in consultation with the relatives of the disappeared and civil society representatives. In particular, it stresses that such measures should include establishing a truth and reconciliation commission, which is being discussed at the governmental level, vetting the security sector for

[32] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21771&LangID=E.

compliance with human rights standards and strengthening the efficiency and independence of the judiciary.

Iran (Islamic Republic of)

85. The Working Group is concerned at the information received concerning cases of individuals who have disappeared from within the prison system in the Islamic Republic of Iran, including after their detention in Evin Prison. The Working Group stresses that, as provided for in article 10 (2) of the Declaration on the Protection of all Persons from Enforced Disappearance, accurate information on the detention of any persons deprived of liberty and their place or places of detention, including transfers, should be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information.

86. The Working Group also remains concerned at information received concerning acts of harassment and intimidation against persons who have reported cases of enforced disappearances or who have actively campaigned to learn the truth about their disappeared relatives and sought justice for them. The Working Group emphasizes that, according to article 13 (3) of the Declaration on the Protection of all Persons from Enforced Disappearance, "steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal".

87. The Working Group once again recalls that the Islamic Republic of Iran agreed to a visit by the Working Group in 2004, which was delayed at the request of the Government. The visit has not taken place yet, in spite of reminders sent on 20 July 2009, 16 August 2010, 18 August 2011, 8 November 2012, 18 September 2013, 28 October 2014, 27 November 2015 and 18 November 2016. The Working Group calls upon the Government to set the dates for a visit as soon as possible.

Kenya

88. The Working Group reiterates its concern at the lack of replies from the Government to its communications, including two general allegations transmitted on 30 September 2014 in relation to enforced disappearances and other human rights violations reportedly carried out by the Anti-Terrorism Police Unit (see A/HRC/WGEID/104/1, paras. 71-78, and A/HRC/30/38, para. 76); and on 4 March 2016 in relation to alleged human rights violations, including the enforced disappearance of terrorism suspects, in the context of high-handed security measures, such as the "Usalama Watch" security operation carried out in April 2014 (see A/HRC/WGEID/108/1, para. 6). The Working Group notes with concern the general allegation transmitted on 1 June 2017, related to reports of enforced disappearances of notably young Muslims in the coastal region of the country (see A/HRC/WGEID/112/1, para. 59 and annex II). The Working Group reiterates that, as provided in article 7 of the Declaration on the Protection of all Persons from Enforced Disappearance, no circumstances whatsoever may be invoked to justify enforced disappearances.

89. On 19 February 2013, the Working Group requested an invitation to visit the country. No response yet has been received from the Government, in spite of a reminders sent on 2 September 2013, 28 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Libya

90. The Working Group is concerned about the volatile situation in Libya, which may facilitate the occurrence of enforced disappearances. The Working Group is particularly concerned about the activities of a number of criminal groups and militias who seem to operate in some areas with the acquiescence, if not the overt support, of the Government. It emphasizes that, as provided in article 2 of the Declaration on the Protection of all Persons

from Enforced Disappearance, no State shall practise, permit or tolerate enforced disappearances.

Mexico

91. The Working Group welcomes the recent approval by the Senate of a general law on enforced disappearances. It urges the Government to redouble its efforts to finalize its approval as soon as possible, while noting at the same time that the bill has some gaps, including in relation to the proposed system of search.

Myanmar

92. The Working Group is concerned about the consistent and reliable reports of grave and systematic human rights violations in Rakhine State, including enforced disappearances. It emphasizes that, as provided in article 2 of the Declaration on the Protection of all Persons from Enforced Disappearance, no State shall practise, permit or tolerate enforced disappearances and that, according to article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances.

93. In that respect, the Working Group notes with concern the general allegation transmitted on 9 June 2017, related to allegations of enforced disappearances following security operations in northern Rakhine State (see A/HRC/WGEID/112/1, paras. 72-73, and annex II) and requests that a reply be provided soon.

Nepal

94. The Working Group was pleased to learn about the renewal, on 8 February 2017, of the mandate of the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons. It regrets, however, that the extension is for just one additional year. The Working Group calls upon the Government of Nepal to extend those mandates further, in order to guarantee the effective planning and functioning of the Commissions and to ensure significant progress on crucial aspects of their mandates, such as truth-telling initiatives, the study of the nature and patterns of the serious human rights violations, including enforced disappearances, the identification of perpetrators and the recommendations on reparations to victims and on institutional reform.

95. The Working Group is also aware that in 2015 the Commission of Investigation on Enforced Disappeared Persons drafted a bill criminalizing enforced disappearances. That piece of legislation has not, however, been tabled in Parliament yet. The Working Group urges the Government of Nepal to accelerate the process of drafting the bill criminalizing enforced disappearances, in consultation with relevant stakeholders, including victims and civil society organizations, and to adopt such legislation promptly. It recalls that, according to article 4 (1) of the Declaration on the Protection of all Persons from Enforced Disappearance, all acts of enforced disappearance should be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness and that article 18 (1) provides that persons who have or are alleged to have committed enforced disappearances should not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

96. On 22 November 2016, the Working Group reiterated its request to visit the country, initially made in 2006. No response has been received yet from the Government; the Working Group hopes that a positive reply will be received soon.

Pakistan

97. The Working Group is concerned about the fact that, during the reporting period, it has transmitted to the Government 119 new cases under its urgent action procedure (see

A/HRC/WGEID/110/1, paras. 82-94, A/HRC/WGEID/111/1, para. 99, and A/HRC/WGEID/112/1, para. 76). The Working Group thanks the Government for the replies dated 15 July 2016 and 17 February 2017 providing information on a large number of cases, which demonstrate the Government's commitment to engaging with the Working Group. However, it reiterates the importance of respecting the following provisions of the Declaration on the Protection of all Persons from Enforced Disappearance:

(a) No State shall practise, permit or tolerate enforced disappearances (art. 2 (1));

(b) No circumstances whatsoever may be invoked to justify enforced disappearances (art. 7);

(c) Accurate information on the detention of persons deprived of their liberty and their place or places of detention, including transfers, should be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (art. 10 (2)).

98. The Working Group encourages the Government to implement the recommendations contained in the follow-up report on the implementation of the recommendations made by the Working Group after its visit to Pakistan in 2012 (see A/HRC/33/51/Add.4). It also reiterates its request to conduct a follow-up visit (see A/HRC/33/51/Add.7, para. 38).

Philippines

99. The Working Group is concerned about the situation in the Philippines, notably in relation to the alleged high number of extrajudicial killings carried out in the context of the "war on drugs", which may enable the occurrence of enforced disappearances. It emphasizes that, as provided in article 7 of the Declaration on the Protection of all Persons from Enforced Disappearance, no circumstances whatsoever may be invoked to justify enforced disappearances.

100. On 3 April 2008, the Working Group requested an invitation to visit the country. No response has been received yet from the Government, in spite of reminders sent on 16 August 2010, 18 August 2011, 18 September 2013, 28 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Russian Federation

101. With respect to the general allegation and cases recently transmitted (see A/HRC/WGEID/110/1, paras. 4 and 109, A/HRC/WGEID/111, para. 109, and A/HRC/WGEID/112, para. 83), the Working Group hopes that a substantive reply will be received soon.

102. On 2 November 2006, the Working Group requested an invitation to visit the country. No positive response has been received yet in spite of reminders sent on 4 June 2008, 20 July 2009, 16 August 2010, 18 August 2011, 8 November 2012, 2 September 2013, 27 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received as soon as possible.

Spain

103. The Working Group has prepared a follow-up report on the implementation of the recommendations made by the Working Group after its visit to Spain (A/HRC/27/49/Add.1). The Working Group thanks the Government of Spain for cooperating with it in producing the follow-up report. It hopes that the recommendations contained in the report will be duly implemented.

Sri Lanka

104. The Working Groups regrets the lack of progress in the establishment and effective functioning of the Office of Missing Persons and urges the Government to take fully into account the recommendations made after the visit carried out in November 2015 concerning the Office (see A/HRC/33/51/Add.2, paras. 79-80).

Syrian Arab Republic

105. The Working Group continues to be gravely concerned about the situation in the Syrian Arab Republic, which facilitates the occurrence of enforced disappearances. It reiterates article 7 of the Declaration on the Protection of all Persons from Enforced Disappearance, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

106. The Working Group reiterates its call to the Security Council to consider referring the situation in the Syrian Arab Republic to the International Criminal Court (see A/HRC/27/49, para. 99, and A/HRC/33/51, para. 103).

107. On 19 September 2011, the Working Group requested an invitation to visit the country. No response has been received yet from the Government, in spite of reminders sent on 2 September 2013, 27 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Thailand

108. On 30 June 2011, the Working Group requested an invitation to visit the country. No response has been received yet from the Government, in spite of reminders sent on 8 November 2012, 2 September 2013, 28 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Turkey

109. The Working Group reiterates the recommendation formulated after its visits in March 2016, notably to adopt immediately a comprehensive policy to address disappearances, which would include the creation of an extrajudicial mechanism specifically devoted to the search of those who have disappeared, and to ensure the proper preservation and investigation of existing burial sites (see A/HRC/33/51/Add.1, paras. 71-72).

United Arab Emirates

110. On 13 September 2013, the Working Group requested an invitation to visit the country. No response has been received yet from the Government, in spite of reminders sent on 27 October 2014, 27 November 2015 and 18 November 2016. The Working Group hopes that a positive reply will be received soon.

Yemen

111. The Working Group continues to be concerned about the situation in Yemen, which may facilitate the occurrence of enforced disappearances (see A/HRC/33/51, para. 109). It reiterates article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

V. Conclusions and recommendations

112. The Working Group is seriously concerned that the number of enforced disappearances continues to be unacceptably high worldwide. A demonstration of this sad reality is the fact that, during the reporting period, the Working Group transmitted 1,094 newly reported cases of disappearance to 36 States. It used the urgent action procedure in 260 of those cases, which allegedly occurred within the three months preceding the receipt of the report by the Working Group.

113. In spite of the large number of cases, underreporting remains a major problem. More assistance should be provided to family members and members of civil society to enable them to report cases to the Working Group and, more importantly, to keep working on enforced disappearance issues.

114. The Working Group cannot discharge its mandate without the cooperation of States, particularly in providing information to the families about the fate or whereabouts of disappeared persons. In that respect, the Working Group welcomes the fact that a high number of States continued cooperating with it by providing regular and substantive replies. Other States considerably improved the quality of their replies by including more detailed and pertinent information. At the same time, the Working Group remains concerned that many States have never replied to the Working Group or have provided responses that do not contain any relevant information or are of a formal and/or procedural nature only, de facto refusing to cooperate. The Working Group urges all States to fulfil their obligations under the Declaration on the Protection of All Persons from Enforced Disappearance and the relevant resolutions of the General Assembly and the Human Rights Council to properly investigate cases of enforced disappearances and to cooperate with the Working Group.

115. During the reporting period, the Working Group continued to observe a pattern of "short-term" enforced disappearances being used in a number of countries. The Working Group expresses its deep concern at the phenomenon. It stresses that no enforced disappearance is acceptable, no matter how short its duration, and that accurate information on the detention of any person deprived of his or her liberty and the place of detention should be made available promptly to family members.

116. The Working Group is concerned about the situation in a number of countries, as reflected in the present report. It reiterates article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provides that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

117. The Working Group continues to be concerned about the increase in instances of abductions carried out by non-State actors, which may be tantamount of acts of enforced disappearance. The Working Group held an expert meeting in February 2016 to discuss that issue and will continue to study whether those situations fall under its mandate and, if so, what actions should be taken. The Working Group calls on all stakeholders to take appropriate measures and to provide information to, and share their views on this matter with, the Working Group.

118. The Working Group continues to note a pattern of threats, intimidation and reprisals against victims of enforced disappearance, including family members, witnesses and human rights defenders working on such cases. It calls upon States to take specific measures to prevent such acts, protect those working on cases of enforced disappearances and punish the perpetrators, in accordance with article 13 (1) and (3) of the Declaration on the Protection of All Persons from Enforced Disappearance. In that respect, the Working Group welcomes the appointment by the Secretary-General, in October 2016, of the new Head of the Office of the United Nations High Commissioner for Human Rights in New York at the level of Assistant Secretary-General. This senior official will lead efforts within the United Nations system to

address intimidation and reprisals against those cooperating with the Organization on human rights.

119. Country visits are an integral part of the mandate of the Working Group. Visits allow the Working Group to highlight country practices in addressing enforced disappearance, to assist States in reducing obstacles to implement the Declaration on the Protection of All Persons from Enforced Disappearance and to ensure direct contact with the family members of victims. The Working Group thanks the Governments of the Gambia, the Sudan and Tajikistan for the invitations extended during the reporting period. It also recognizes the support provided by the Government of Albania during the visit carried out in December 2016. During the reporting period, the Working Group also requested to visit the Democratic Republic of the Congo and Turkmenistan. In addition to having made new requests, the Working Group reiterated its past requests to visit the following countries, without having yet received a positive response: Bangladesh, Bahrain, Belarus, Burundi, China, Egypt, India, Indonesia, Kenya, Lebanon, Nepal, Nicaragua, Philippines, Russian Federation, Rwanda, South Africa, Syrian Arab Republic, Thailand, United Arab Emirates, Uzbekistan and Zimbabwe. There are other countries that have invited the Working Group to visit and/or confirmed invitations, but for which specific dates have not been agreed, such as Algeria and Iran (Islamic Republic of). Visits to Libya and South Sudan, which have been accepted by the respective countries, have not taken place so far, mainly for security reasons. The Working Group therefore calls upon all States with pending requests for visits to respond favourably to them in the light of Human Rights Council resolution 21/4 and, for those that have agreed to visits, to respond as soon as possible with specific dates.

120. The Working Group reiterates its previous call to be given a role in the follow-up to the findings of commissions of inquiry and other fact-finding or investigative bodies created by the Human Rights Council insofar as they relate to enforced disappearances (see A/HRC/33/Add.51, para. 119).

121. The Working Group continues the practice to hold one session per year outside Geneva, in part so as to facilitate interaction with the relatives of disappeared persons and raise awareness of the Working Group's mandate and activities at the local and regional levels. It appreciates the invitation received from the Government of the Republic of Korea to host a session during the reporting period as well as that from the Government of Belgium to host a session in Brussels in 2018. The Working Group invites other countries to follow these good examples.

122. The Working Group once again calls upon States that have not signed and/or ratified the International Convention for the Protection of All Persons from Enforced Disappearance to do so as soon as possible and to accept the competence of the Committee on Enforced Disappearances to receive individual cases under article 31 and inter-State complaints under article 32 of the Convention.

Annex I

Country visit requests and invitations extended

Invitations extended to the WGEID

Country	*Date*
Albania	5 to 12 December 2016
Algeria[1]	tbd
Ecuador	tbd
Gambia (The)	12 to 19 June 2017
Iran (Islamic Republic of)[2]	tbd
Kyrgyzstan	tbd
Libya	tbd, postponed
South Sudan	Last quarter of 2016 (did not take place)
Sudan	20 to 29 November 2017
Tajikistan	tbd

Visits requested by the WGEID

Country	*Request sent*	*Last reminder sent*
Bahrain	27 October 2014	18 November 2016
Bangladesh	12 March 2013	18 November 2016
Belarus	30 June 2011	18 November 2016
Burundi	27 May 2009	18 November 2016
China	19 February 2013	18 November 2016
Democratic People's Republic of Korea	22 May 2015	18 November 2016
Democratic Republic of Congo	17 May 2017	-
Egypt	30 June 2011	18 November 2016
India	16 August 2010	18 November 2016
Indonesia	12 December 2006	18 November 2016
Kenya	19 February 2013	18 November 2016
Lebanon	27 November 2015	18 November 2016

[1] Please refer to paras. 28 and 64 of the current document.
[2] Please refer to paras. 28 and 87 of the current document.

Country	*Request sent*	*Last reminder sent*
Nepal	12 May 2006	18 November 2016
Nicaragua	23 May 2006	18 November 2016
Philippines	3 April 2008	18 November 2016
Russian Federation	2 November 2006	18 November 2016
Rwanda	27 October 2014	18 November 2016
South Africa	28 October 2014	18 November 2016
South Sudan	29 August 2011	22 April 2016
Syrian Arab Republic	19 September 2011	18 November 2016
Thailand	30 June 2011	18 November 2016
Turkmenistan	18 November 2016	-
The former Yugoslav Republic of Macedonia	27 October 2014	27 November 2015
Ukraine	22 April 2016	18 November 2016
United Arab Emirates	13 September 2013	18 November 2016
Uzbekistan	30 June 2011	18 November 2016
Zimbabwe	20 July 2009	18 November 2016

Annex II

Statistical summary: cases of enforced or involuntary disappearance reported to the Working Group between 1980 and 2017, and general allegations transmitted

	Outstanding cases		Total		Cases clarified by:		Status of person at date of clarification			Discontinued cases	Closed cases	General Allegation	
States entities	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead			GA sent	Response
Afghanistan	3		3										
Albania	1		1										
Algeria	3 179	20	3 208	21	9	20	11	10	8			Yes (2013)	Yes
Angola	2		12	1	7				7	3			
Argentina[1]	3 241	728	3 444	775	125	78	39	5	159				
Bahrain	4		17		2	11	2	11				Yes (2014)	Yes
Bangladesh	49	1	52	2	1	2	3					Yes (2011, 2016, 2017)	No
Belarus	3		3										
Bhutan[2]	0		0										
Bolivia (Plurinational State of)	28	3	48	3	19	1	19		1				
Bosnia and Herzegovina												Yes (2009, 2011, 2014)	Yes

[1] The Working Group decided at its 110th session to transfer three cases from Argentina to Uruguay.

[2] The Working Group decided at its 111th session to transfer five cases from Bhutan to India.

States entities	Outstanding cases		Total		Cases clarified by:		Status of person at date of clarification			Discontinued cases	Closed cases	General Allegation	
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead			GA sent	Response
Brazil	13		63	4	46	4	1		49				
Bulgaria			3		3				3				
Burkina Faso			3		3				3				
Burundi	58	1	59	1		1	1						
Cambodia	1		3							2			
Cameroon	14		19		5		4	1				Yes (2016)	No
Central African Republic	3		3									Yes (2013)	No
Chad	23		34		3	8	9	1	1				
Chile	785	63	908	65	100	23	2		121				
China	43	23	139	21	78	18	59	35	2			Yes (2010, 2011)	Yes
Colombia	973	96	1 260	126	219	68	160	24	103			Yes (2012, 2013, 2015, 2016)	Yes
Congo	89	3	91	3						2			
Cuba			1		1			1					
Czech Republic												Yes (2009)	Yes
Democratic People's Republic of Korea	167	42	167	42								Yes (2012)	No
Democratic Republic of the Congo	48	11	57	11	6	3	9					Yes (2015)	Yes
Denmark			1			1		1				Yes (2009)	No

States entities	Outstanding cases		Total		Cases clarified by		Status of person at date of clarification			Discontinued cases	Closed cases	General Allegation	
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead			GA sent	Response
Dominican Republic	2		5		2		2			1			
Ecuador	5		27	2	18	4	12	4	6				
Egypt	258	1	431	3	90	93	51	121	1			Yes (2011, 2016)	Yes
El Salvador	2 282	296	2 673	333	318	73	196	175	20			Yes (2015)	No
Equatorial Guinea	8		8										
Eritrea	62	4	62	4								Yes (2012, 2017)	No
Ethiopia	113	1	120	2	3	4	2	5					
France	1		1										
Gambia	4	2	12	2		8	8						
Georgia			1		1				1				
Greece	1		3							2			
Guatemala	2 897	372	3 154	390	177	80	187	6	64			Yes (2011, 2013)	Yes
Guinea	37	2	44	2		7			7				
Guyana	1		1										
Haiti	38	1	48	1	9	1	1	4	5				
Honduras	130	21	210	34	37	43	54	8	18				

	Outstanding cases		Total		Cases clarified by:		Status of person at date of clarification			Discontinued cases	Closed cases	General Allegation	
States entities	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead			GA sent	Response
India[3]	368	11	448	13	68	12	51	7	22			Yes (2009, 2011, 2013)	No
Indonesia	163	3	167	3	3	1	3	1				Yes (2011, 2013, 2017)	No
Iran (Islamic Republic of)	528	102	547	103	14	5	8	2	9			Yes (2017)	No
Iraq	16 416	2 300	16 563	2 317	117	30	122	16	9				
Ireland												Yes (2009)	No
Israel	2		3			1			1				
Japan			4	3									
Jordan	3		5			2	1	1					
Kazakhstan			2			2		2					
Kenya	77		77									Yes (2011, 2014, 2016, 2017)	No
Kuwait	1		2			1		1					
Lao PDR	2	2	11	2		8		7	1	1			
Lebanon	313	19	322	19	2	7	8	1					
Libya	33	1	42	1		9	6	2	1			Yes (2014)	No
Lithuania												Yes (2012)	Yes

[3] The Working Group decided at its 111th session to transfer five cases from Bhutan to India.

	Outstanding cases		Total		Cases clarified by		Status of person at date of clarification			Disconnected cases	Closed cases	Control Allegation	
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead			Gl sent	Response
Malaysia	1		3			1		1		1			
Maldives	1		1										
Mauritania	4		4										
Mexico	377	33	560	43	134	33	80	18	69	16		Yes (2013, 2014, 2017/2)	No
Montenegro			16	1	1			1		14	1		
Morocco	140	9	374	31	160	53	141	16	56	21		Yes (2013)	Yes
Mozambique	3		3										
Myanmar	2	1	9	6	7		5	2				Yes (2017)	No
Namibia	2		3			1	1						
Nepal	470	57	684	73	135	79	153	60	1			Yes (2014)	No
Nicaragua	103	2	234	4	112	19	45	11	75				
Nigeria			7		6	1	7						
Oman	1		2			1	1						
Pakistan	723	2	842	2	57	62	58	43	19			Yes (2015)	Yes
Paraguay	0		23		20		19		1	3		Yes (2014)	Yes
Peru	2 365	236	3 006	311	253	388	450	85	106				
Philippines	625	74	786	94	126	35	112	19	30			Yes (2009, 2012)	No
Romania			1		1		1						
Republic of Korea	3		3										
Russian Federation	808	38	820	40	2	10	12					Yes (2016)	Yes

States entities	Outstanding cases		Total		Cases clarified by:		Status of person at date of clarification			Discontinued cases	Closed cases	General Allegation	
	Cases	Female	Cases	Probable	Government	Sources	At liberty	In detention	Dead			GA sent	Response
Rwanda	23	2	26	2		2	1	1		1			
Saudi Arabia	5		15		4	4	3	4	1	2			
Serbia	0		1		1		1						
Seychelles	3		3										
Somalia	1		1										
South Africa	1	1	12	2	3	2	1	1	3	*			
South Sudan	2		2										
Spain	7		9		2				2			Yes (2014)	Yes
Sri Lanka	5 859	121	12 450	191	6 551	40	118	27	6 486			Yes (2011, 2014)	Yes
Sudan	174	5	388	37	205	9	212	2					
Switzerland			1		1			1					
Syrian Arab Republic	218	11	275	12	15	42	30	21	6			Yes (2011 2)	Yes
Tajikistan	3		10		5	2	1		6				
Thailand	82	8	86	8	2		1	1		2		Yes	No
The former Yugoslav Republic of Macedonia												Yes (2009)	No
Timor-Leste	428	28	564	36	98	18	51	23	2				
Togo	10	2	11	2		1	1						
Tunisia	12		29	1	12	9	2	15					
Turkey*	94	3	222	12	76	31	73	28	29	1			
Turkmenistan	4		6		2			2					

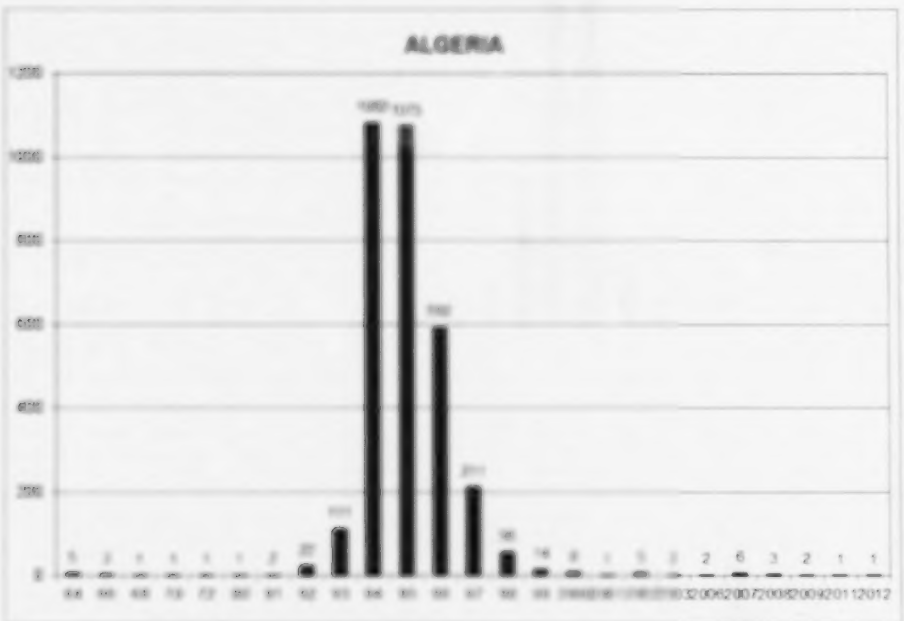
* The Working Group determined during its 111th session that one case was a duplicate and subsequently expunged it from the records.

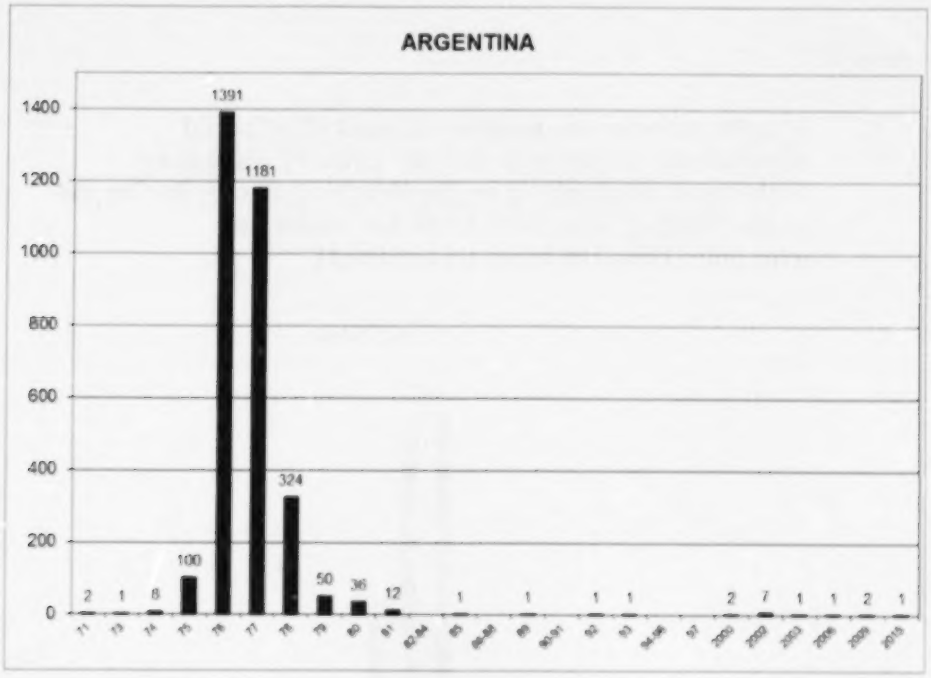
	Outstanding cases		Total		Cases clarified by		Status of person at date of clarification			Discontinued cases	Closed cases	General Allegation	
States/entities	Cases	Females	Cases	Females	Government	Sources	At liberty	In detention	Dead			Tick note	Regrouped
Uganda	15	2	22	4	2	5	2	5					
Ukraine	5		8		2	1	2		1				
United Arab Emirates	5	1	43	5	8	30	10	28					
United Republic of Tanzania			2		2			2					
United States of America	4		5		1		1						
Uruguay[1]	20	2	34	7	13	1	5	4	5			Yes (2013, 2015)	Yes
Uzbekistan	7		20		12	1	2	11					
Venezuela (Bolivarian Republic of)	16	2	20	3	4		1		3				
Viet Nam	1		2		1			1					
Yemen	12		170		135	9	66	5	73	14			
Zambia			1	1		1		1					
Zimbabwe	5	1	7	1	1	1	1		1			Yes (2009)	No
State of Palestine	4	1	5	1		1	1						

[1] The Working Group decided at its 110th session to transfer three cases from Argentina to Uruguay.

Annex III

Graphs showing the number of cases of enforced disappearances per year and per country according to the cases transmitted by the Working Group during the period 1980-17 May 2017 (only for countries with more than 100 cases transmitted)

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1200
1000
800
600
400
200
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1181
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50
36
12
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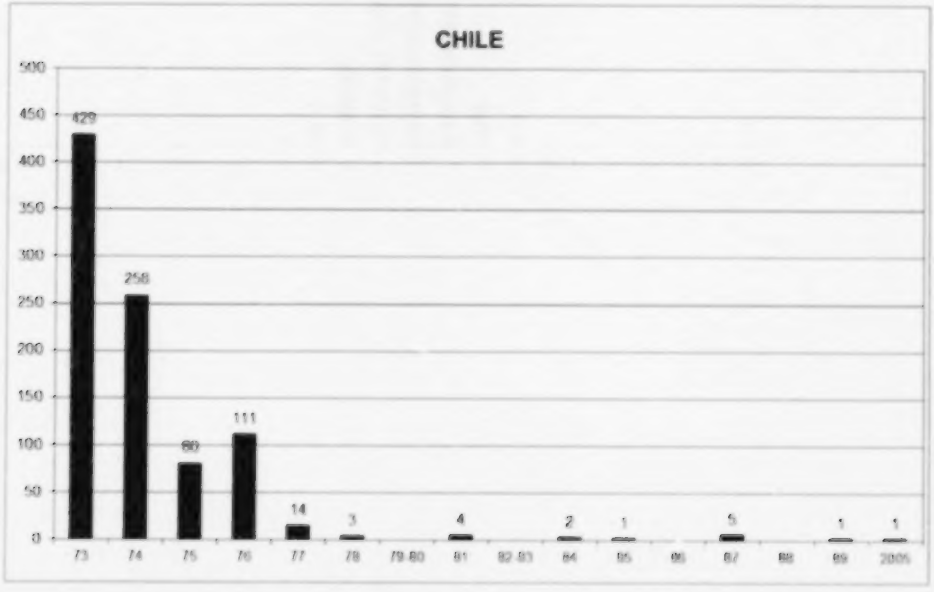
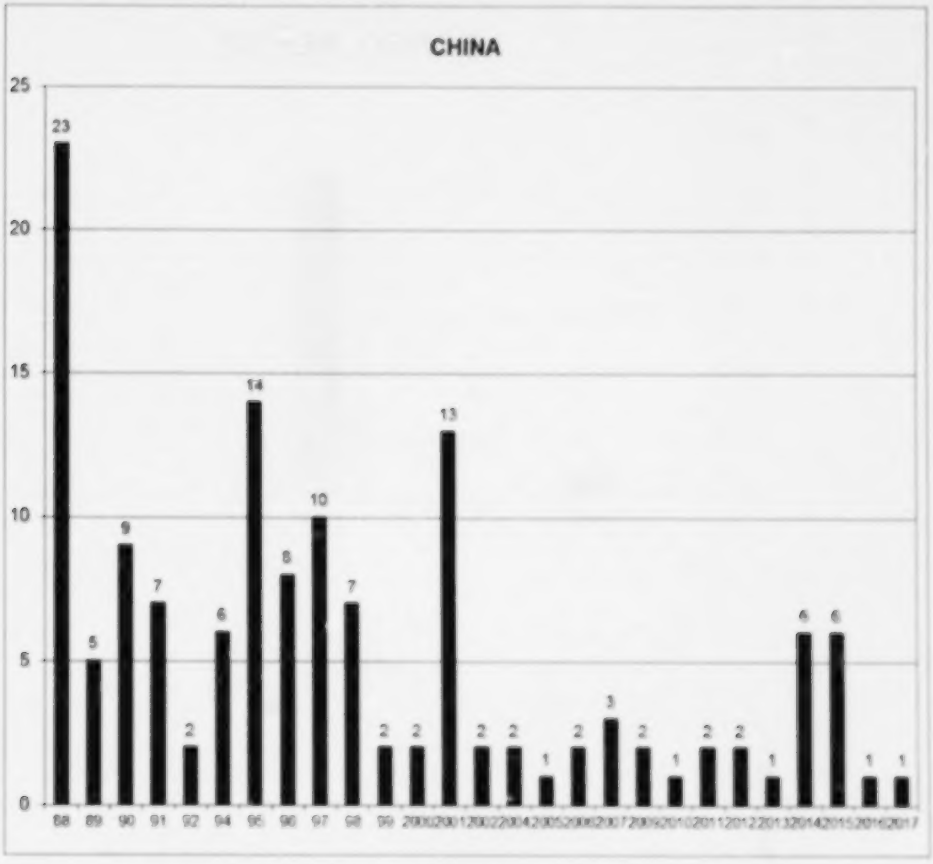
1
8
1
1
1
2
7
1
1
2
1


CHILE
500
450
400
350
300
250
200
150
100
50
0
429
258
80
111
14
3
4
2
1
5
1
1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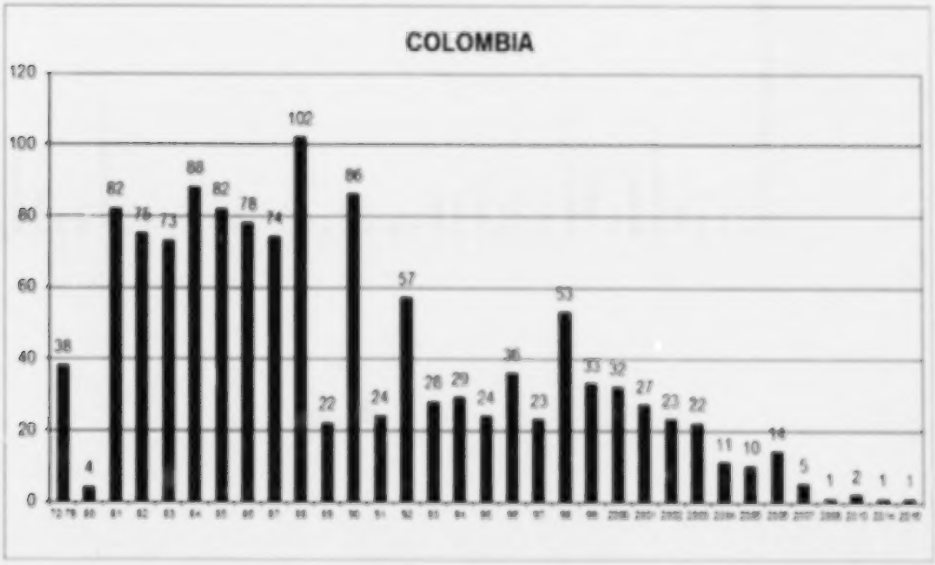
15
10
5
0
23
5
9
7
2
6
14
8
10
7
2
2
13
2
2
1
2
3
2
1
2
2
1
6
6
1
1
88 89 90 91 92 94 95 96 97 98 99 2000 2001 2002 2004 2005 2006 2007 2009 2010 2011 2012 2013 2014 2015 2016 2017


COLOMBIA
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80
60
40
20
0
38
4
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76
73
88
82
78
74
102
22
86
24
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11
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14
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2
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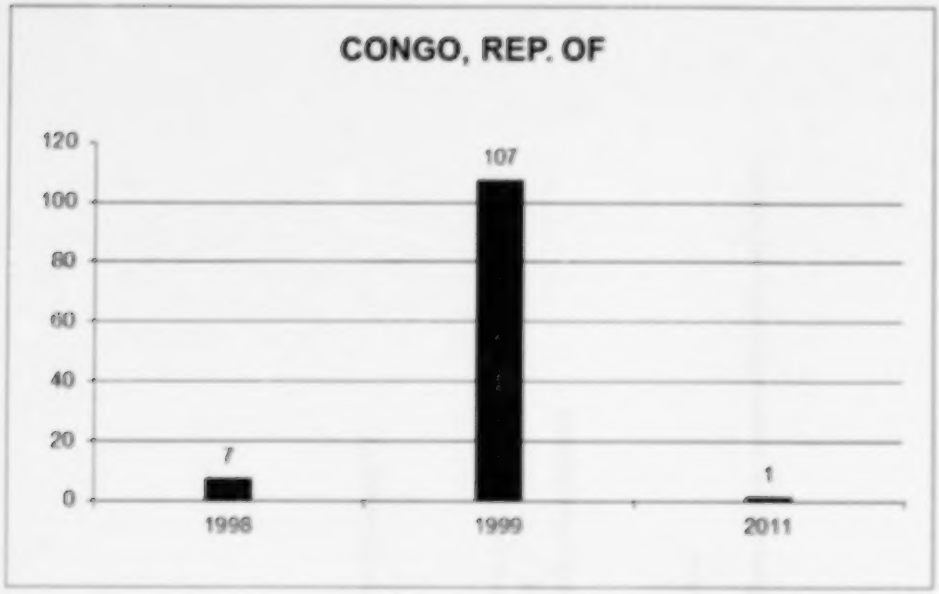
1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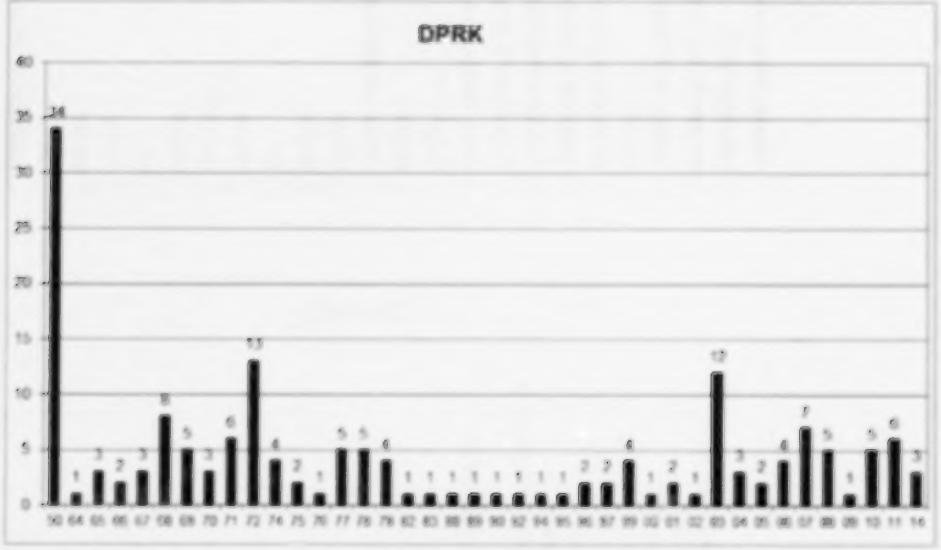
107
1
1998
1999
2011


DPRK
60
35
30
25
20
15
10
5
0
34
1
3
2
3
8
5
3
6
13
4
2
1
5
5
6
1
1
1
1
1
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1
12
3
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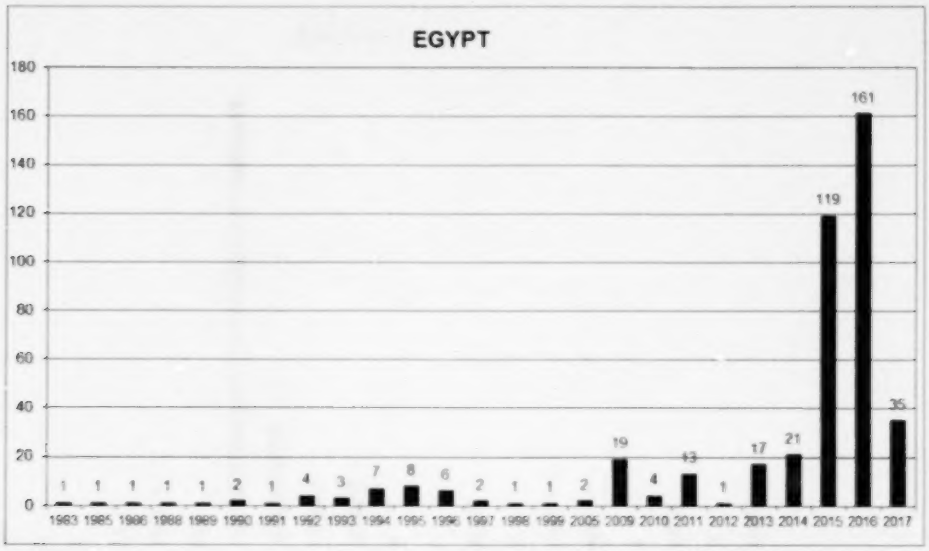
7
5
1
5
6
3


EGYPT
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160
140
120
100
80
60
40
20
0
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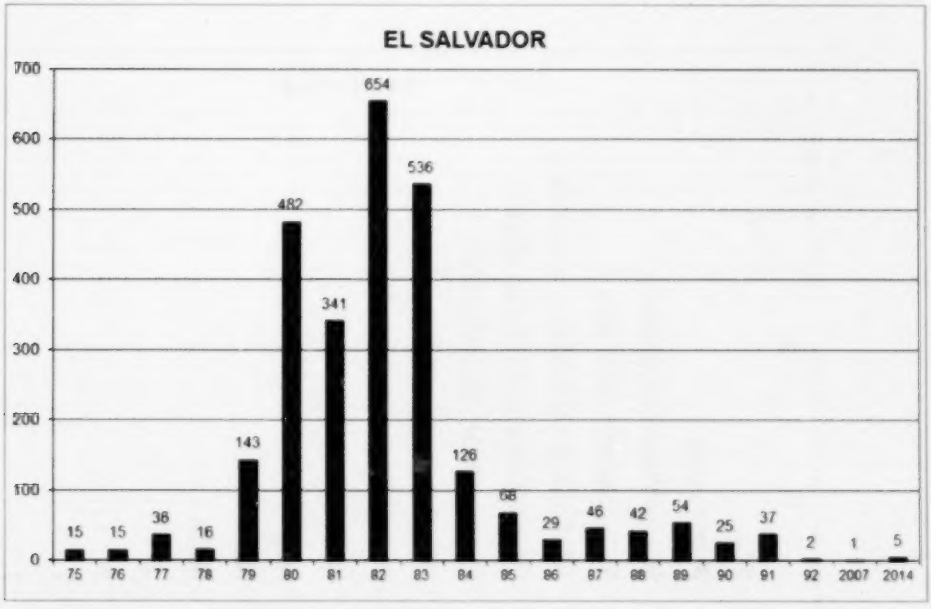
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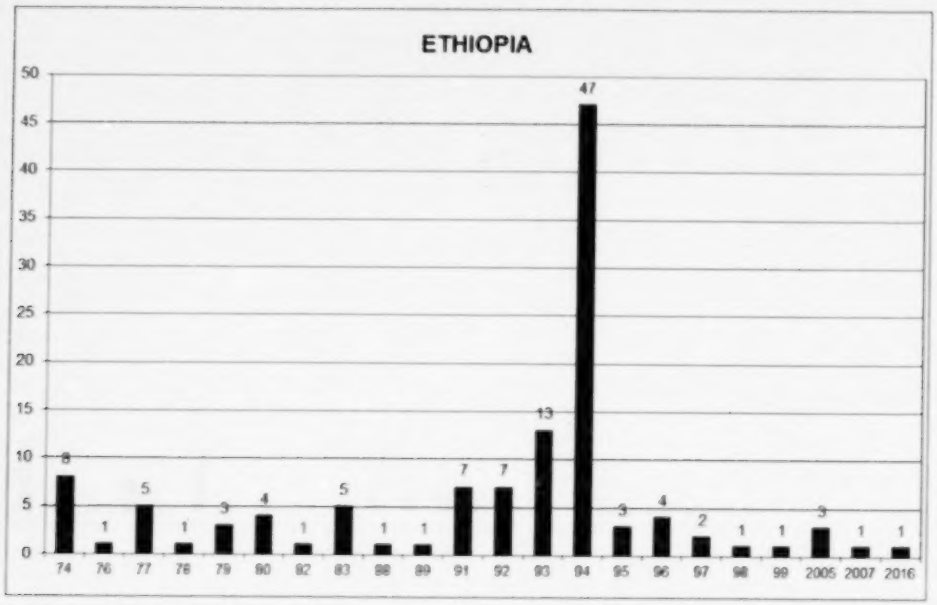
75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 2007 2014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1
1
7
7
13
47
3
4
2
1
1
3
1
1
74
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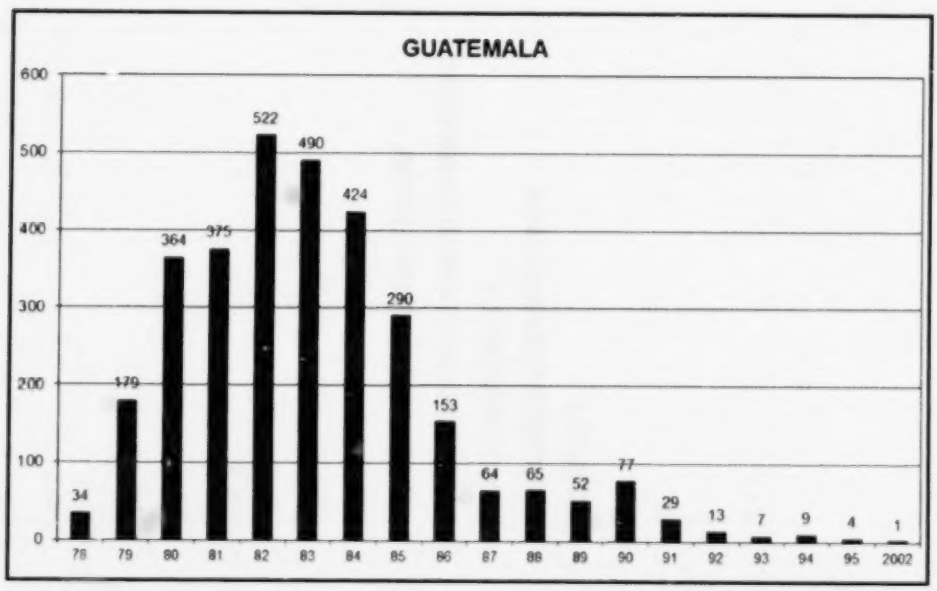
98
99
2005
2007
2016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52
77
29
13
7
9
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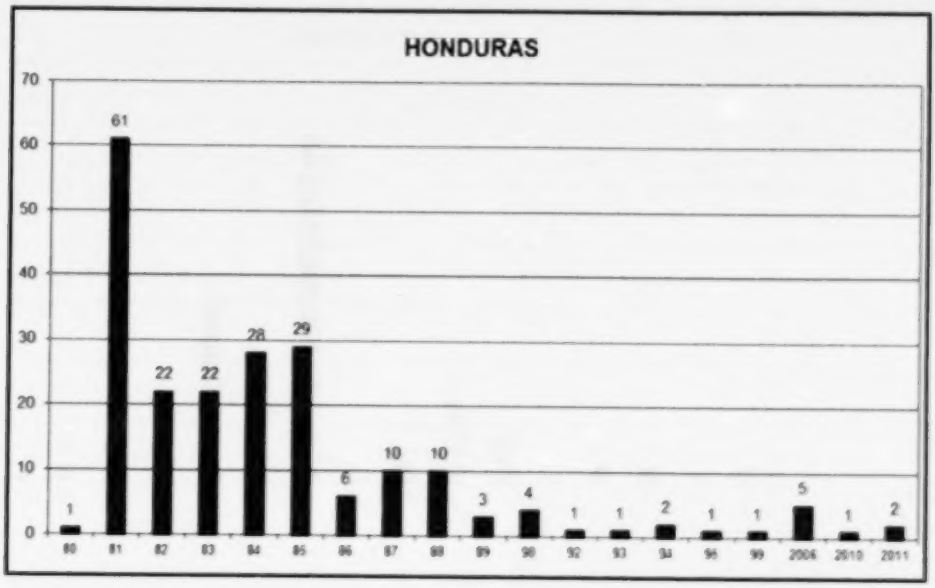
94
95
2002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1
1
2
1
1
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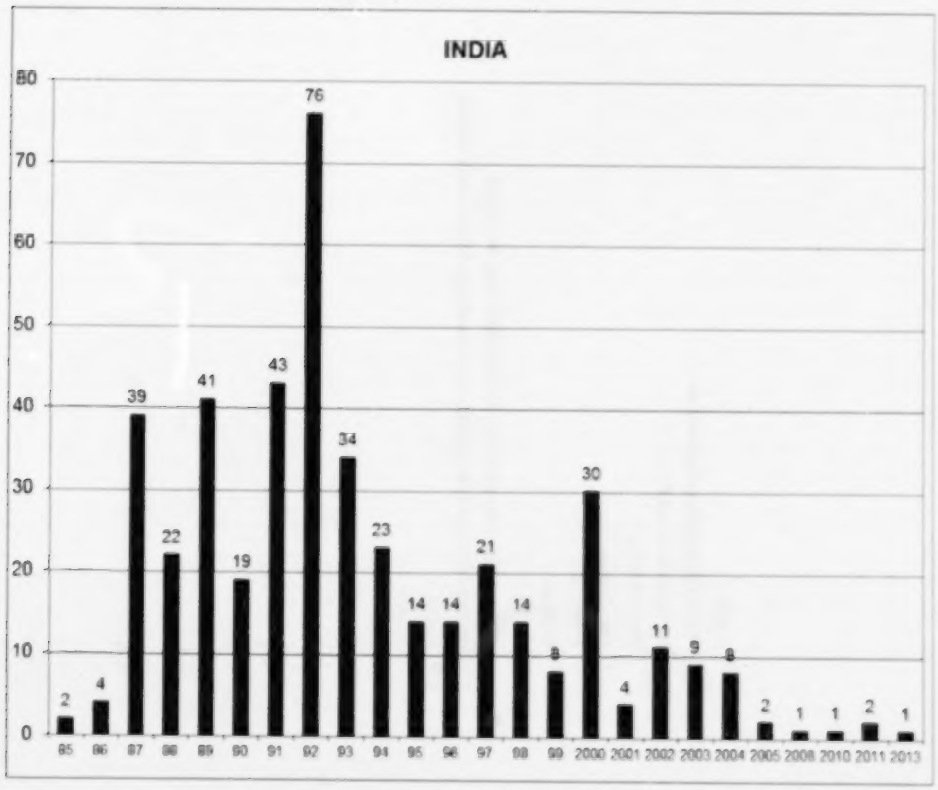
99
2004
2010
2011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14
8
30
4
11
9
8
2
1
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86
87
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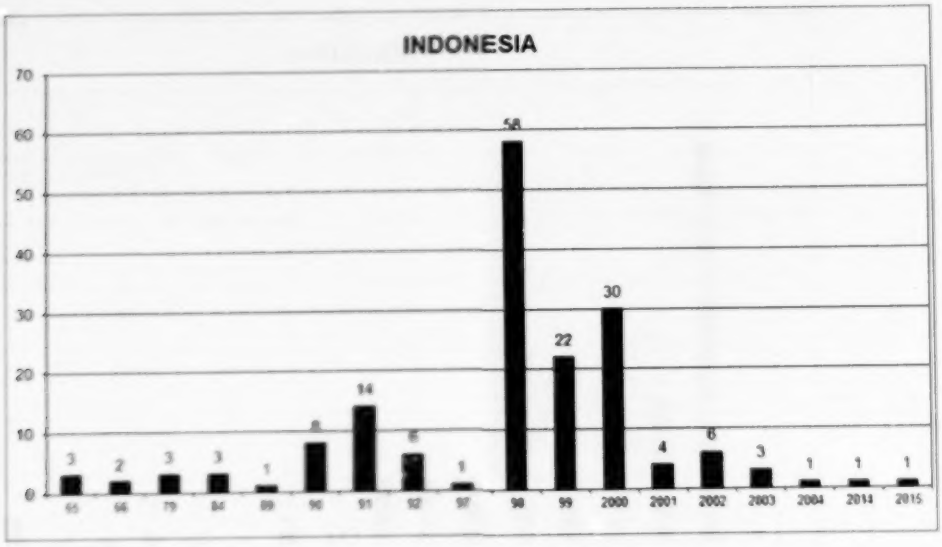
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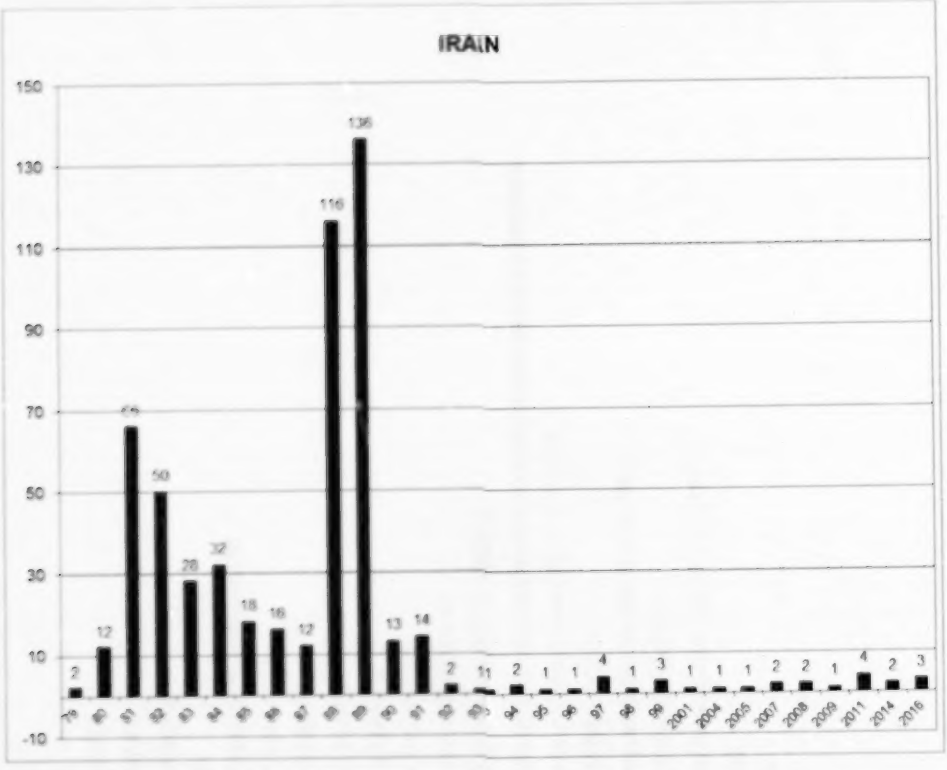
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90
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-10
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32
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14
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1
2
1
1
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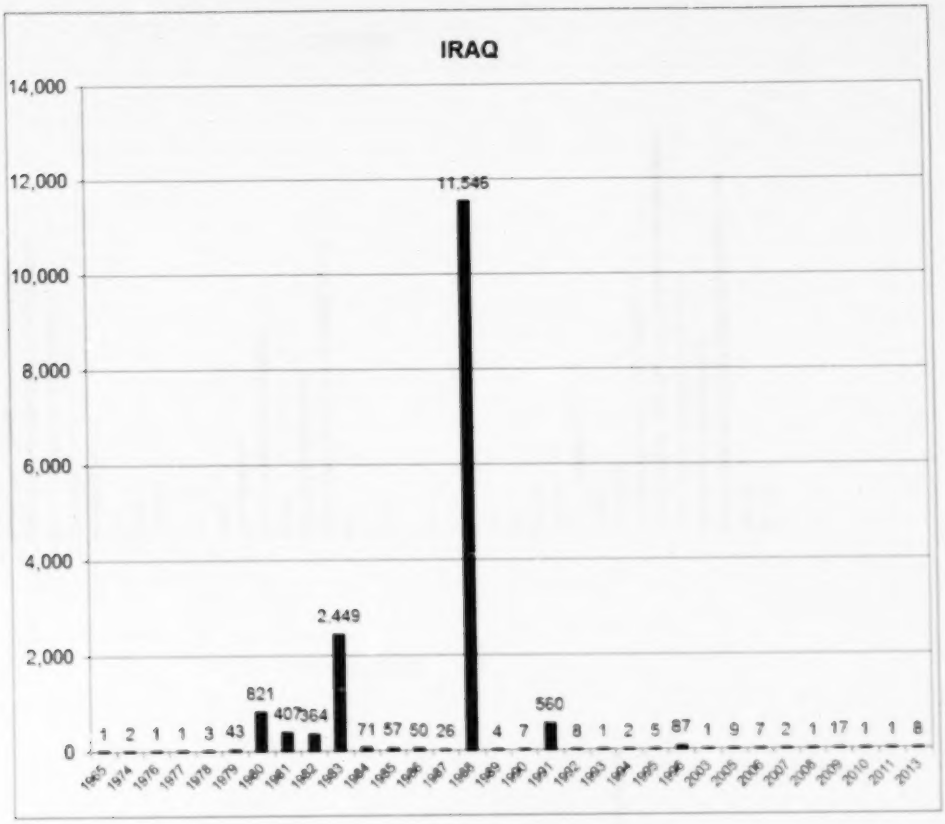
2011
2014
2016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12,000
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8,000
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407
364
560
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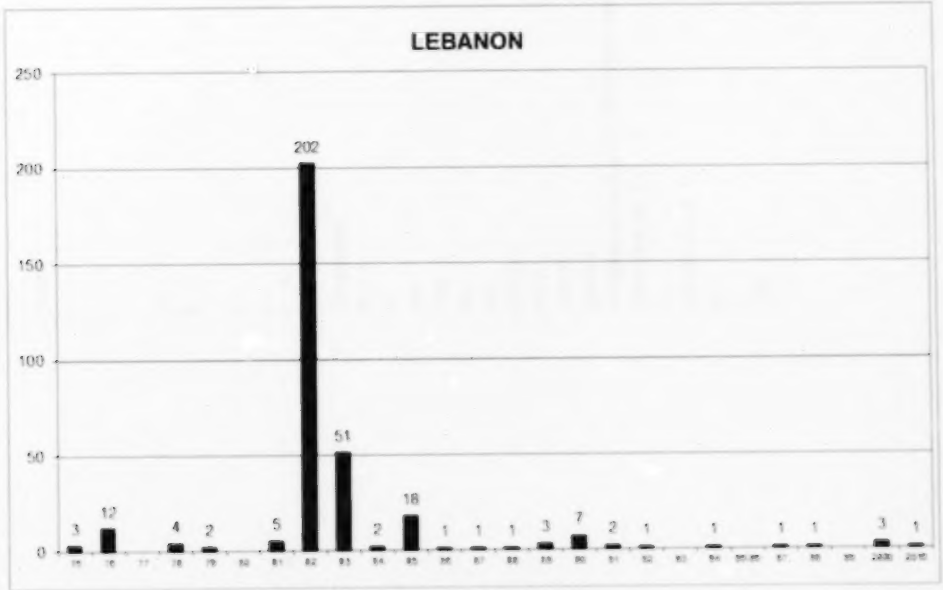
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51
18
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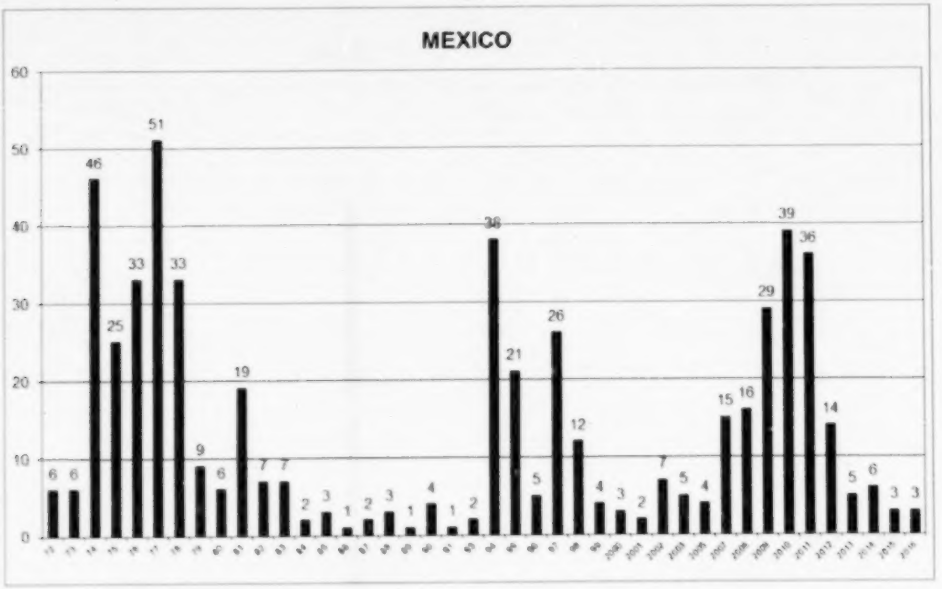
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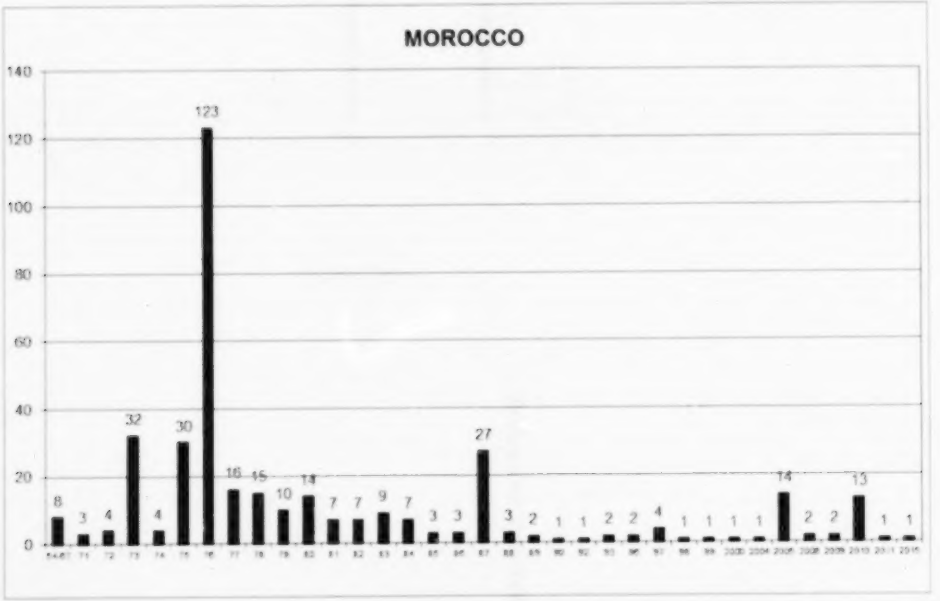
MOROCCO
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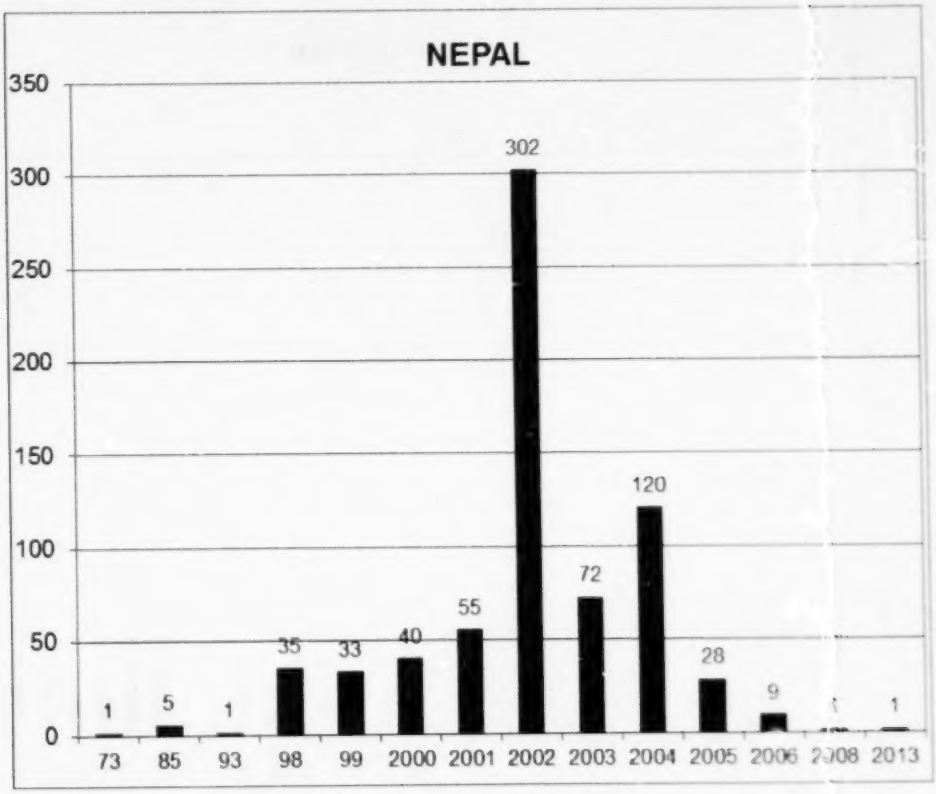
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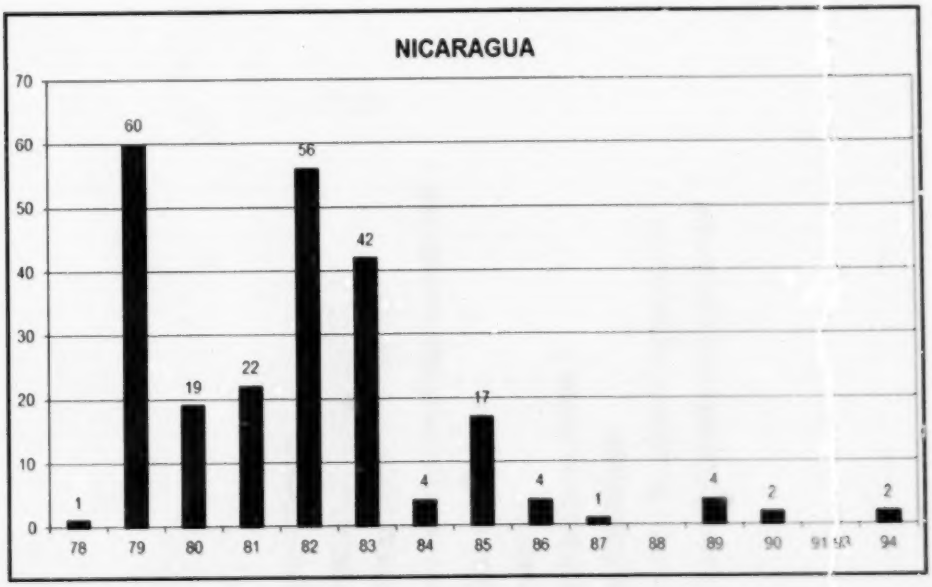
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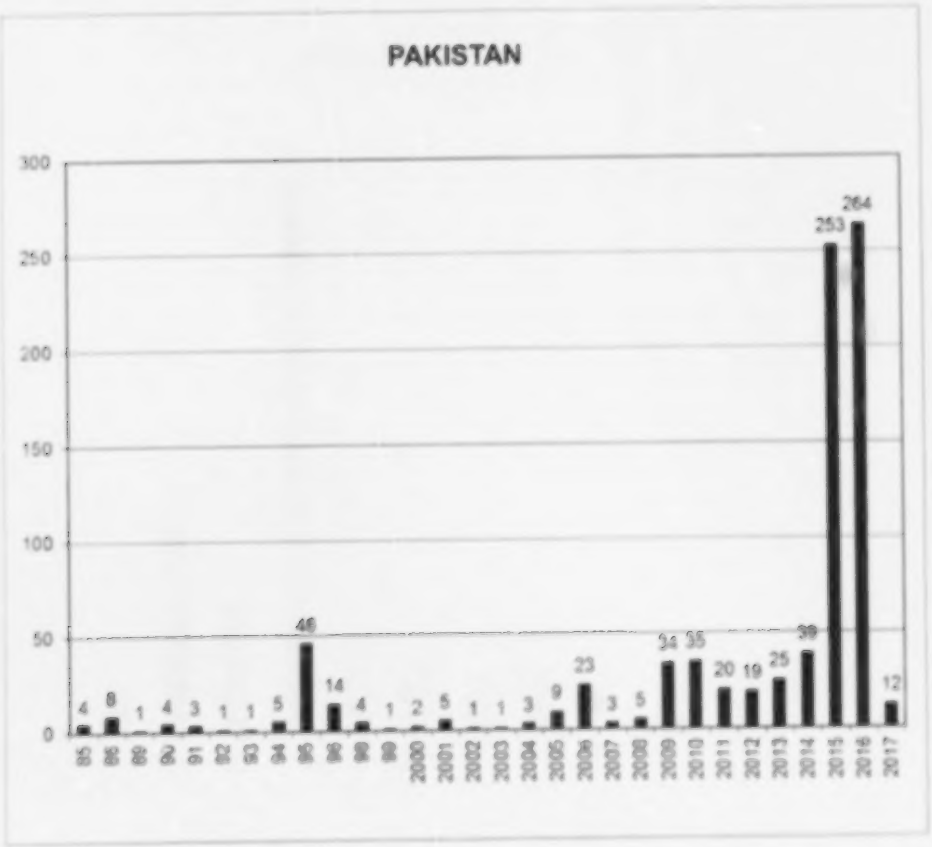
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5
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3
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34
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25
39
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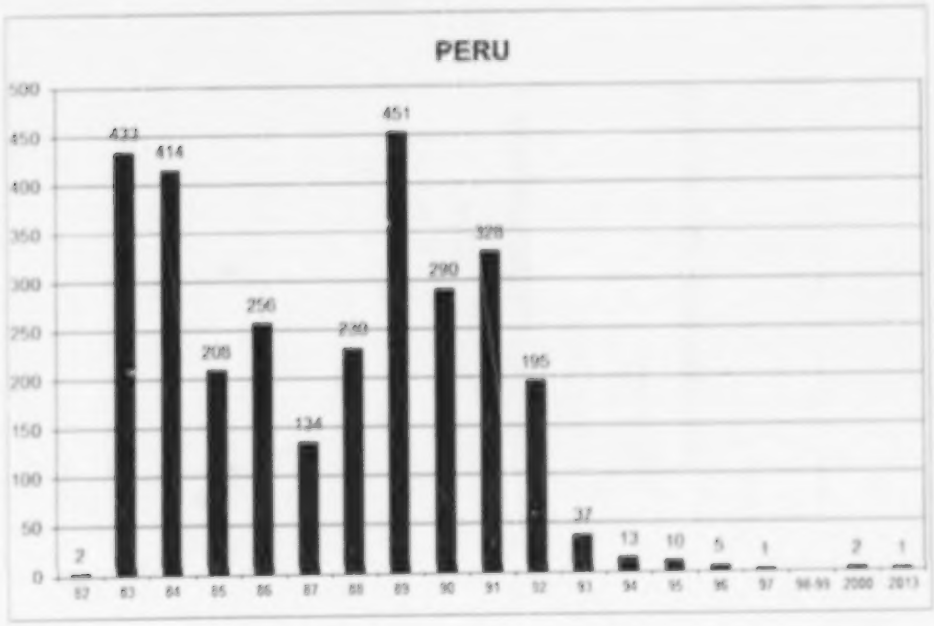
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290
328
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37
13
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5
1
2
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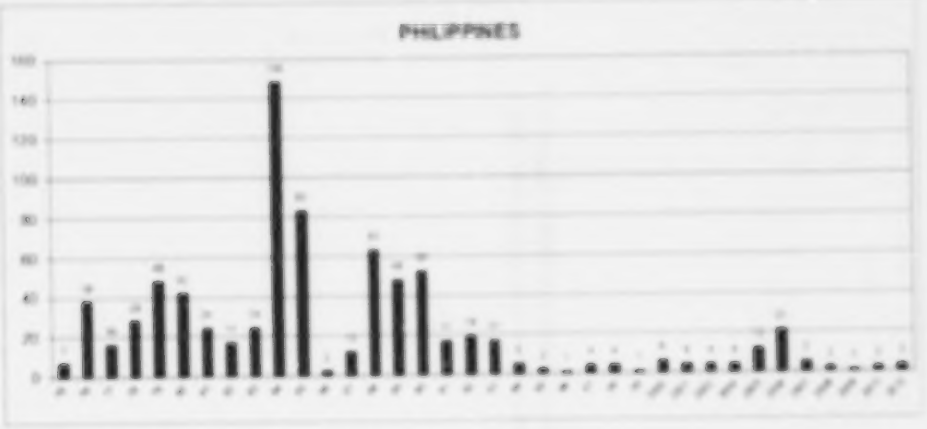
98-99
2000
2013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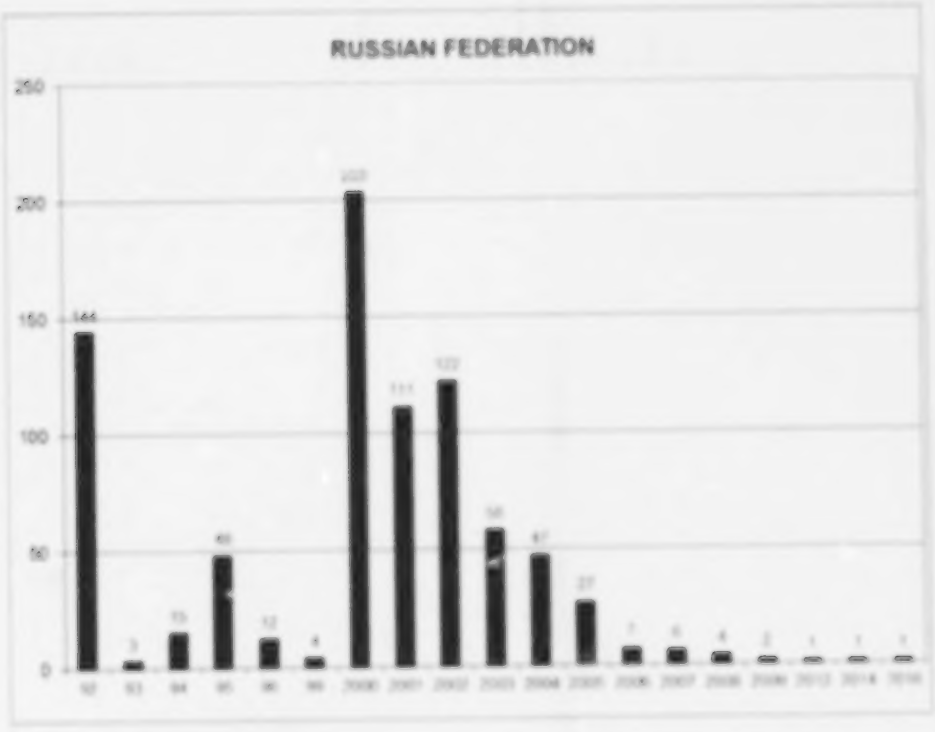
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49
12
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207
111
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58
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7
6
4
2
1
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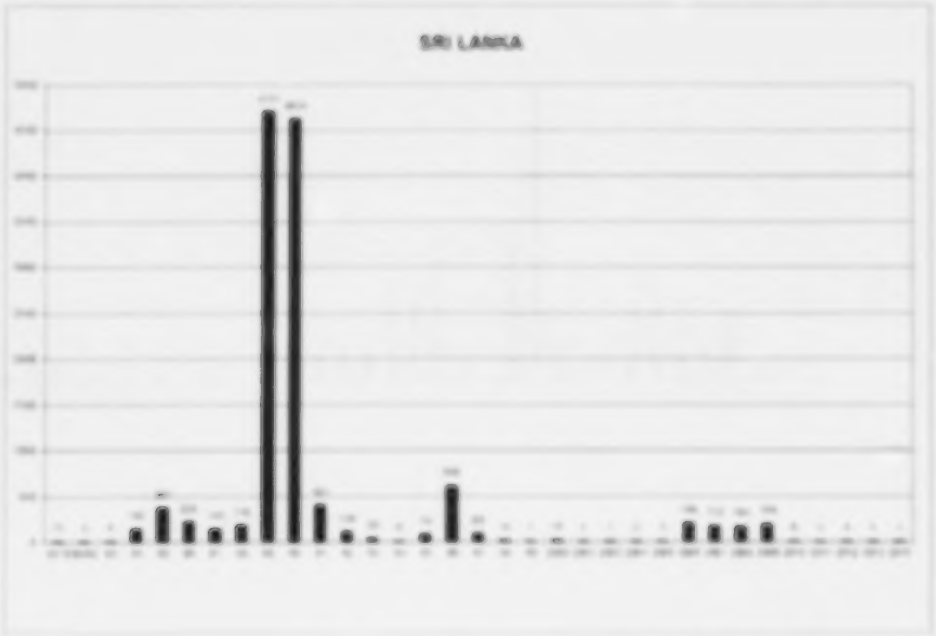
2014
2016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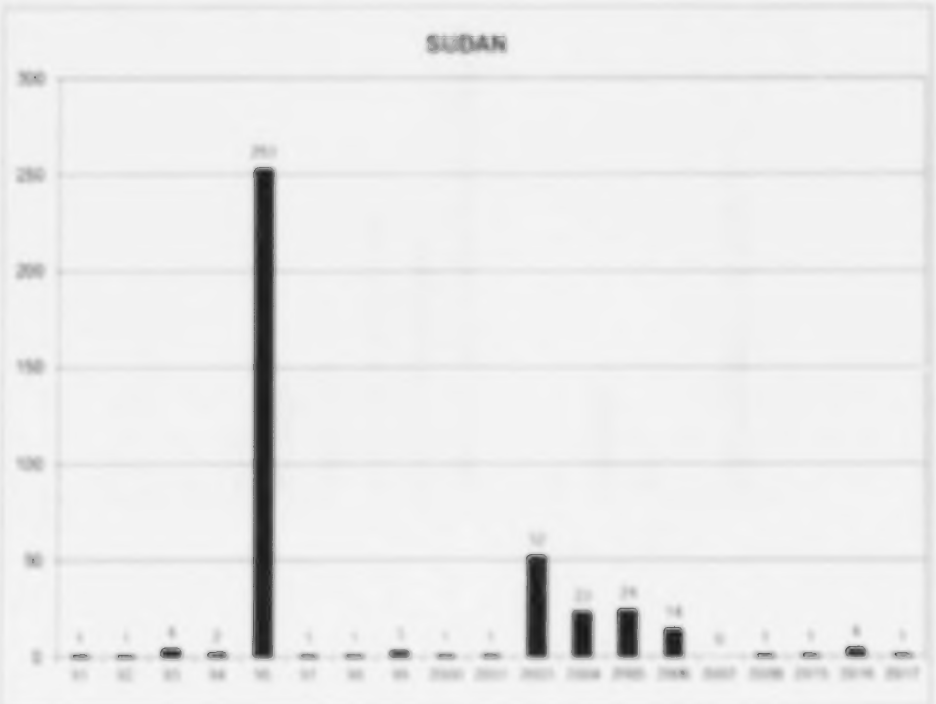
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200
150
100
50
0
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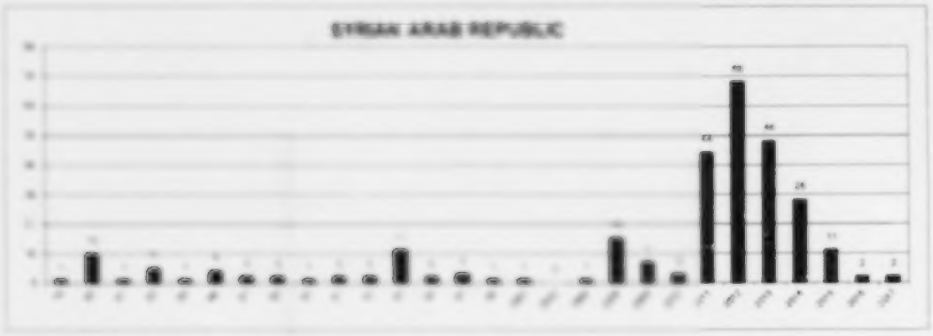
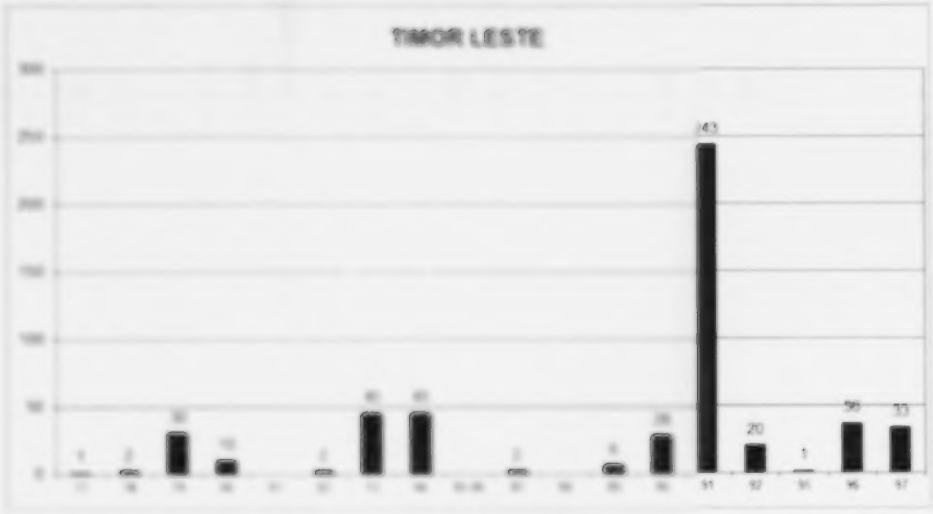
12
23
24
14


SYRIAN ARAB REPUBLIC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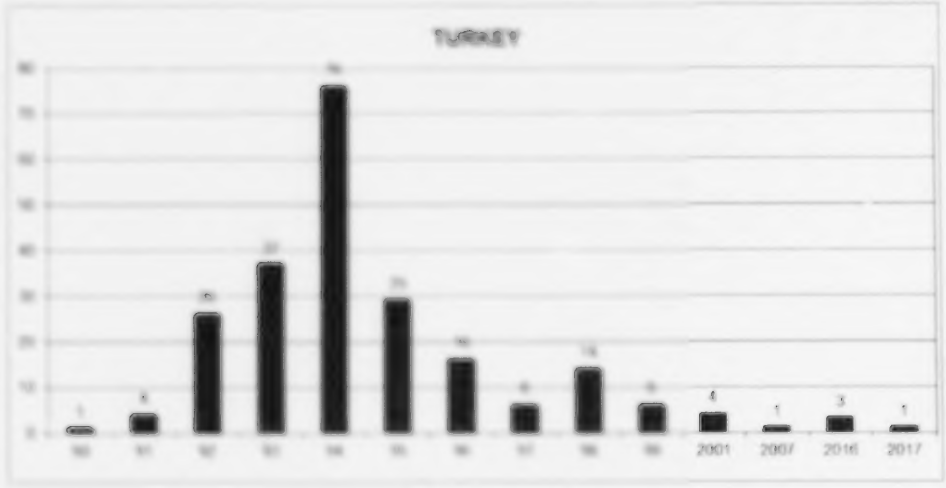
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1
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1
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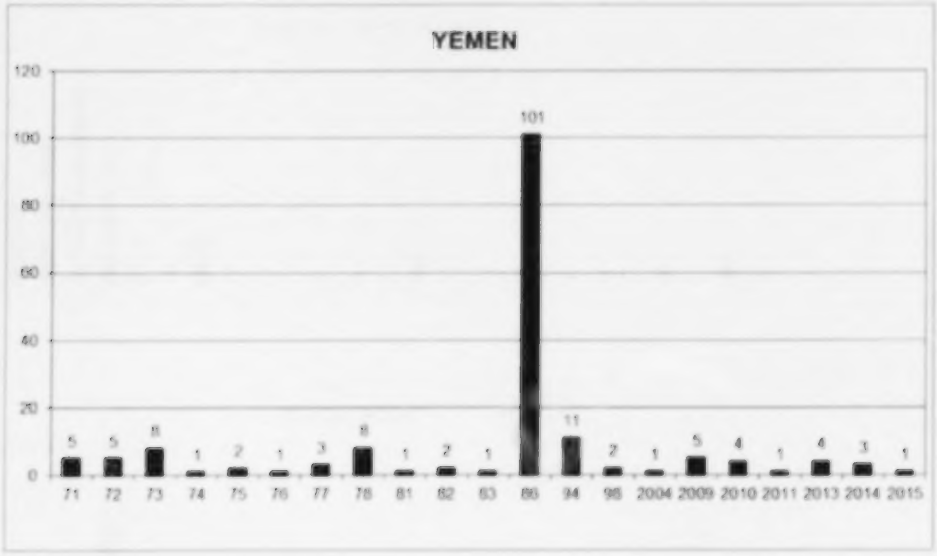
2007
2016
2017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86
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2004
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2010
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2013
2014
2015

United Nations A/HRC/36/39/Add.1

General Assembly

Distr.: General
18 July 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Albania

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on Enforced or Involuntary Disappearances on its visit to Albania from 5 to 12 December 2016. The Working Group thanks the Government of Albania for the invitation and for the cooperation extended before and during the visit. Today, the Government of Albania faces the opportunity and the challenge of overcoming the painful legacy of the human rights violations, including enforced disappearances, committed under the communist dictatorship. The Working Group remains committed to supporting the Government of Albania in its efforts to secure victims the rights to truth, justice, reparation and memory and guarantees of non-repetition.

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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Albania*

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II.	General situation of enforced disappearance in Albania	3
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IV.	Truth	7
V.	Justice	11
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	Legislative and institutional framework	16
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* Circulated in the language of submission only.

I. Introduction

1. A delegation of the Working Group on Enforced or Involuntary Disappearances conducted an eight-day official visit to Albania from 5 to 12 December 2016. The delegation consisted of the current Chair of the Working Group, Houria Es-Slami, and a member of the Working Group, Henrikas Mickevičius. This is the first time that the Working Group has visited Albania.

2. On 2 December 2009, the Government of Albania extended a standing invitation to all the United Nations special procedures. The Working Group thanks the Government of Albania for extending an invitation to visit the country, and for the support received prior to and during the visit, particularly from the Ministry of Foreign Affairs.

3. The Working Group wishes to thank the Office of the Resident Coordinator and the United Nations country team in Albania for their valuable support. The Working Group also expresses its gratitude to the associations and relatives of disappeared persons who provided information and testimonies during the visit.

4. In Tirana, the Working Group met the parliamentary subcommittee on human rights, the President of the Supreme Court, the Minister of Social Welfare and Youth and the Deputy Minister of Justice, and representatives of the Ministry of Foreign Affairs, the State Intelligence Service, the General Prosecutor's Office and the Ministry of Internal Affairs.

5. The Working Group also met representatives of independent State institutions, including the authority for the opening of the Sigurimi files, the institute for integration of the former politically persecuted, the Institute for the Studies of Communist Crimes and Consequences, the Commissioner for Protection from Discrimination, the Office of the Information and Data Protection Commissioner, and the Ombudsperson.

6. The Working Group met a number of formerly persecuted persons, including relatives of persons who had disappeared under the dictatorship, and also held meetings with civil society organizations and with representatives of the international community.

II. General situation of enforced disappearance in Albania

7. It has been more than 25 years since the fall of the totalitarian regime in Albania, yet the wounds of that painful past remain vivid. Albania has yet to deal adequately with the gross human rights violations committed between 1944 and 1991, when tens of thousands of victims suffered imprisonment, torture, internal exile, execution and enforced disappearance.

8. The Working Group has transmitted one case of an alleged enforced disappearance to the Government of Albania, which currently remains outstanding. However, as is the case with other countries, the number of cases registered with the Working Group does not necessarily reflect the real extent of the problem.

9. For almost half a century, Albania lived isolated from the world under the dictatorship. Many Albanians, considered enemies of the communist regime, were subjected to various forms of repression and human rights violations. The Sigurimi, the powerful intelligence service equipped with the most sophisticated means at the time, monitored the population's slightest movements.

10. The official data on missing persons and on those who were judicially or extrajudicially imprisoned or executed under the dictatorship are reportedly incomplete, with different non-governmental organizations offering different figures. It is estimated however, that more than 6,000 persons went missing, yet with no specific information on how many of them were forcibly disappeared.[1] According to information provided by the

[1] This was the most conservative and widely circulated figure supplied to the Working Group, although some sources say the number could be significantly higher.

Institute for the Studies of Communist Crimes and Consequences, victims can be classified into the following categories: people who were executed by the regime, with or without a trial; people who were imprisoned; and people who were internally displaced to concentration or labour camps. It is estimated that approximately 650 women and 5,600 men were executed, 22,000 persons were imprisoned, and 40,000 persons were internally displaced to camps. However, as internal displacement affected entire families, the total number of victims rises to more than 100,000 persons.[2]

11. The remains of those who were executed by the regime were mostly buried in mass unmarked graves located near detention centres, prisons and concentration or labour camps throughout the country. The 13 former political detention centres that operated between 1944 and 1991 were Kukes, Peshkopi, Burrel, Tirana, Elbasan, Berat, Tepelene, Gjirokaster, Vlore, Kavaje, Durres, Shkoder and Korce.[3] In addition, it is estimated that the number of labour camps amounted to more than 20, with some research identifying up to 56 camps.[4] The number of burial sites also remains inaccurate and is estimated by some sources to be between 22 and 29, including mass graves.[5]

12. In addition to those who were killed, a number of detained victims lost their lives owing to exhaustion, malnutrition and disease. This includes children, some born in forced labour camps, who were never registered and could not survive in these places. Living conditions in prisons and in concentration and labour camps were reportedly inhumane, and detainees were often subjected to torture and other forms of cruel, inhuman or degrading treatment. It has been argued that these facilities not only served the purpose of providing free industrial labour for the regime, but also allowed for the "physical elimination" of its political opponents.[6] In the case of those who died from old age or other natural causes in concentration and labour camps, but had no relatives living with them in these locations, their remains were not always returned to their families, but buried secretly, and therefore they also disappeared.

13. Finally, the Working Group also heard stories of victims who perished while attempting to escape the regime by leaving the country, and who were executed at border crossings; prisoners who were executed while attempting to flee from places of detention; and individuals who disappeared during military service. While there are varying degrees of certainty as to the final fate of these victims, most are presumed dead.

14. Regardless of the circumstances of death, the remains of imprisoned victims were rarely returned to their families. It was reportedly also a matter of not dedicating graves to political opponents of the regime so as not to transform them into symbols of opposition.

15. The surviving victims of imprisonment, torture, forced labour and exile have been recognized and granted victim status by the State. However, victims of enforced disappearance have not. The operative term in Albanian legislation, used by the implementing institutions, is that of "formerly politically persecuted". This designation recognizes persons as victims and provides for the right to compensation for those who can provide evidence that they are survivors of political persecution by the authoritarian regime. If the persons themselves have died, certain members of their families are able to submit the application in order to receive compensation. This approach eliminates from the compensation scheme family members who cannot obtain evidence that their loved ones

[2] Figures supplied to the Working Group during its meeting with the Institute for the Studies of Communist Crimes and Consequences, and reiterated during meetings with other authorities.

[3] Figures supplied to the Working Group during its meeting with the Institute for the Studies of Communist Crimes and Consequences.

[4] See R. Gashi, "Types of prisons and labour camps and the position of convicted persons in Albania during the communist dictatorship", *Thesis*, vol. 1 (2012), p. 31. The author identifies (pp. 32-33) at least 56 forced labour camps, including camps for drainage of marshes (14), for agriculture and canalizing (6), construction and industrial construction camps (16), airport construction camps (2) and mining camps (9), as well as camps and prisons exclusively for female detainees (9).

[5] The current mapping by the institute for integration of the former politically persecuted identifies at least 29 suspected burial sites.

[6] R. Gashi, "Types of prisons and labour camps".

have disappeared at the hands of the repressive State and fallen victim to political persecution. In cases when relatives can prove political persecution, that is, they are able to recover a judgment sentencing the disappeared person to death for a "political" crime, or obtain a decision in civil court proceedings declaring the death of a person imprisoned for a "political" crime, compensation is paid to them, albeit not as victims of enforced disappearance, but rather as surviving family members of formerly politically persecuted persons. Therefore, they do not enjoy the rights guaranteed to victims of enforced disappearance under international law, such as the right to truth, justice, reparation, memory and guarantees of non-repetition.

16. Despite the painful past that has affected a large part of its population, estimated today at nearly 3 million inhabitants (18 per cent were born after the fall of the regime), Albania has not launched a clear process to face its past and heal its wounds. The Working Group believes that it is necessary for Albania to adopt a comprehensive approach in dealing with the serious human rights violations of the past and to engage in reconciliation at the national level. Handling cases of enforced disappearance should be at the centre of this approach.

17. In general, the Working Group noted a continuing reluctance on the part of Albania to address its past of serious human rights violations and the lack of a national debate around the period of the dictatorship. More than 25 years after the end of the dictatorship, Albania is trying, through multiple initiatives but without proven effectiveness and far from satisfying the victims, to rectify some of the past abuses, in the absence of an overall strategy of reconciliation that can help build a future that will meet the aspirations of its people.

18. Current positive initiatives aimed at ensuring good governance and strengthening institutions and the rule of law cannot and will not reach their full potential if they are constrained by the burden of the country's painful past.

III. Legislative and institutional framework

19. The Working Group commends the Albanian authorities on their efforts to set up a comprehensive legal framework for the protection and promotion of human rights. The Albanian Constitution provides for a broad catalogue of civil, political, economic, social and cultural rights and declares them indivisible, inalienable and inviolable. The Constitution provides, inter alia, that no one may be deprived of liberty except in cases provided by law and in accordance with legal procedures, and no one may be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[7]

20. Albania has ratified all major international and regional human rights treaties and other relevant treaties, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the four Geneva Conventions of 1949 and their additional protocols, the Rome Statute of the International Criminal Court, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

21. In particular, the Working Group is pleased to note that Albania is party to the International Convention for the Protection of All Persons from Enforced Disappearance, and has recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals under its jurisdiction, claiming to be victims of a violation by Albania of provisions of this Convention. Likewise, Albania recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under the Convention.

[7] Article 25 of the Constitution.

22. In accordance with the Constitution, international human rights treaties, when ratified by the parliament, become part of the national law; they are, as a general rule, directly applicable, and take priority over national legislation in case of conflict.[8] It is therefore essential that judges, prosecutors and other relevant officials should be fully familiar with the International Convention for the Protection of All Persons from Enforced Disappearance and other human rights treaties to which Albania is party. Exchanges with legal professionals during the visit brought to light an inadequate knowledge of essential precepts of the Convention, related, inter alia, to the nature of State obligations, the continuous character of the crime of enforced disappearance, and the concept of a victim of enforced disappearance.

23. The Working Group welcomes the fact that Albania has codified enforced disappearance as a distinct criminal offence, consistent with the definition given in the Declaration on the Protection of All Persons from Enforced Disappearance, and punishable by appropriate penalties which take into account its extreme seriousness.[9] The Criminal Code covers the various modes of criminal liability, including liability in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. It expressly provides for the application of command or superior individual criminal responsibility for such crime. Perpetrating enforced disappearance against children and women aggravates criminal responsibility.[10] The Criminal Code also provides for appropriate mitigating or aggravating circumstances. In 2013, the Code was amended to include enforced disappearance in the definition of crimes against humanity, to which no statute of limitations applies.[11]

24. The Working Group encourages Albania to adopt provisions stating expressly that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied, so that the criminal law framework for preventing, investigating and punishing enforced disappearance is complete. It is important that domestic legislation is interpreted and applied in accordance with international law. It is a matter for regret that the criminal law on the books has not been tested in practice. The Working Group regrets that, despite large estimated numbers of persons forcibly disappeared by the authoritarian regime before it came to an end at the beginning of the 1990s, no case of enforced disappearance has been tried in Albanian courts.

25. The Working Group endorses the legislative and regulatory efforts of Albania to prevent secret detentions in compliance with article 10 of the Declaration. Albania has adopted a detailed legal framework to this end, which includes the requirement that public prosecutors should immediately be notified of all arrests and detentions in police stations, the right of arrested or detained persons to communicate with defence counsel without delay upon their arrest or detention, the right to inform the family, the right to be brought before a judge promptly after arrest, the requirement to keep detailed registers of detainees and prisoners, and a provision that imprisonments can be carried out only in accordance with the court sentences in formally designated places.[12]

26. Despite noticeable progress in developing adequate criminal and penitentiary legislation, the overall legal framework for addressing enforced disappearances perpetrated by the authoritarian regime following the Second World War is not satisfactory. In particular, it is disappointing that, more than 25 years after the regime came to an end, Albania still does not have comprehensive legislation securing the rights of both society and the families of forcibly disappeared persons to know the truth about what happened; the right of families to have the remains of their loved ones found, identified and returned to them; their right to reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition; and the right to memory, as well as the right to access to justice.

[8] Article 122 of the Constitution.
[9] Article 109/c of the Criminal Code (supplemented by Law No. 144, dated 2 May 2013, art. 25).
[10] Article 109/c of the Criminal Code.
[11] Articles 67 and 74 of the Criminal Code.
[12] Criminal Procedure Code of the Republic of Albania, Law No. 7905 (1995).

27. The legislation, which is intended to address past gross violations of human rights, is fragmented and scattered,[13] and so is the corresponding institutional framework,[14] in which a growing number of small entities and units — institute, department, task force or authority — with similar and sometimes overlapping mandates find themselves in competition for resources and influence, and are lacking coordination and collaboration,[15] which results in omissions and neglect of important issues and dilution of awaited outcomes. Experience in dealing with past enforced disappearances in a number of transitional justice contexts has shown that the establishment of a broadly mandated, multidisciplinary, "one-stop shop" type of institution might be a better investment in securing the rights of victims and, more generally, achieving national reconciliation, than the multiplication of minor institutions and units.

28. The Working Group is particularly concerned about the approach taken, which does not take into account the specificities of the phenomenon of enforced disappearance, as the legislation adopted to compensate for the sufferings endured by Albanians under the authoritarian regime did not embrace the concept of enforced disappearance (see para. 16 above).

29. The Working Group wishes to recall that the concept of enforced disappearance entails, inter alia, deprivation of liberty, whether legal or illegal under the law in force, by State actors or by private individuals or organized groups acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the State, followed by a refusal to disclose the fate or whereabouts of the persons concerned, with any intention, be it silencing political dissent and spreading terror among the population, or countering terrorism, or fighting ordinary crime, or with no clear intention at all. In addition, the concept of a victim of enforced disappearance includes both the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.[16] Family members of forcibly disappeared persons are commonly those who are directly affected by this heinous crime and egregious violation of human rights.

30. Based on the foregoing, it is advisable for Albania to grant the status of victim of enforced disappearance to family members of persons who disappeared or whose remains vanished during repressions, whether it was a result of political persecution or not. Family members should not be forced to accept a declaration of death of a disappeared loved one in order to receive compensation before their fate or whereabouts are clarified. Instead, the introduction in national legislation of a certificate of absence due to enforced disappearance, as has been accepted in a number of States, should be considered as a solution to define the legal status of forcibly disappeared persons and to guarantee pertinent rights to their family members.

IV. Truth

31. The Working Group, in its general comment on the right to the truth in relation to enforced disappearances, states that the right to the truth means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared

[13] See, for example: Law No. 7514 on Innocence, Amnesty of Ex-Convicted and Politically Persecuted of 30 September 1991; on Genocide and Crimes against Humanity, Committed in Albania during the Communist Regime on Political, Religious or Ideological Grounds, Law No. 8001 of 22 September 1995; Law No. 7698 on the Restitution and Compensation of Former Owners of 15 April 1993; and Law No. 45/2015 on the Right of Information to the Documents of the Former Security Service of the Popular Socialistic Republic of Albania (2015).

[14] Institute for integration of the former politically persecuted; Institute for the Studies of Communist Crimes and Consequences; the interministerial task force to search, locate and identify remains of persons executed during the communist regime; the new authority for the opening of the Sigurimi files and the ministries of justice, finance and social welfare and youth, for issues related to compensation.

[15] During one of the meetings the idea was raised that there is a need for a body to coordinate the work of existing bodies.

[16] International Convention for the Protection of All Persons from Enforced Disappearance, art. 24.

persons, and the circumstances of the disappearances, and the identity of the perpetrator(s).[17] Furthermore, the Working Group highlights that when a disappeared person is found to be dead, his or her family has the right to have the remains of the loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture.[18]

32. A number of ad hoc and fragmented efforts to search for those who disappeared under the dictatorship have been launched in Albania, yet none of them has formed part of a comprehensive, truth-seeking State policy. In 2010, the Council of Ministers established an interministerial task force to search for, locate and identify remains of persons executed during the rule of the regime.[19] The task force was led by the Ministry of the Interior, with the participation of the Ministry of Social Welfare and Youth and the Ministry of Justice. However, when enquiring about the scope and mandate of the task force, and of any results it might have delivered, the Working Group could not obtain any information from either State or non-State interlocutors.

33. From the outset, the task force is said to have lacked dedicated resources and a technical secretariat, and its members met only sporadically. It was reported to the Working Group by different interlocutors that the task force never requested an investigation or coordinated with the General Prosecutor's Office, which was the core authority in charge of the investigation and exhumation of any suspected burial sites. While officially never dismantled, the interministerial task force is no longer operational, and the tasks it was charged with will reportedly now come under the disappeared persons' section of the institute for integration of the former politically persecuted.

34. The institute for integration of the former politically persecuted has already been collecting information on persons who went missing during the dictatorship. However, it was charged with this task only in late 2014, and for a number of years there have been no mandated institutional efforts to identify the missing persons and their relatives, to search for suspected burial sites or to recover and match remains. The Institute has managed to compile approximate figures, establish some contact with relatives and set up a database. It has also mapped a number of suspected burial sites in cooperation with victims' associations and relatives. However, it has not been allocated any budget to conduct actual excavations. It is estimated that the budget required to thoroughly search for missing remains in the burial sites identified in Albania is between 15 and 20 million euros.[20]

35. The Working Group was also informed of some exhumations, which were conducted in 2002 and 2003 to recover the remains of 22 intellectuals who were falsely accused of bombing the Soviet embassy in 1951 and executed by the regime. Through forensic testing, the remains of 17 of the 22 victims were identified. Also, excavations were conducted by the authorities in 2010 near Mount Dajti, in Tirana, where 13 sets of remains were reportedly found near a former detention centre. These remains, however, have yet to be identified, as there is reportedly no adequate forensic expertise within the country to do so.

36. With a few exceptions, most of the searches and excavations have been undertaken by the families of the disappeared, using their own financial resources, and without any expert or forensic support from State institutions. The institute for integration of the former politically persecuted estimates that there are at least 300 cases in which the family members claim to have identified the remains of their loved ones. However, none of the remains recovered directly by the relatives of victims have undergone DNA testing, so there is no conclusive evidence showing to whom they belong.

[17] See A/HRC/16/48, para. 39.

[18] Ibid.

[19] Decision No. 133 of 24 February 2010 on the creation of a task force that will seek to find and identify the people executed by the communist regime.

[20] Estimate supplied to the Working Group by the Institute for the Studies of Communist Crimes and Consequences.

37. Families sometimes have to pay witnesses to help in identifying places of burial. They go from region to region trying to locate these places by themselves. They conduct their own investigations and research and sometimes their own informal exhumations. Many sites are now being degraded. Some remains in certain burial sites have allegedly been displaced more than three times. The testimonies received indicate that, except for the authorization of the prosecutorial authorities to carry out some of the excavations, there is a lack of involvement of the General Prosecutor's Office or the Institute for Forensic Medicine in these searches. Another source of concern is that a number of the suspected burial sites that have been identified and mapped, and that remain unexcavated, have not been preserved.

38. The Working Group is encouraged by an envisaged agreement on collaboration with the International Commission on Missing Persons, aimed at supporting the search for missing remains. The agreement would involve the presence of the Commission in Albania to provide technical expertise and capacity-building for data management systems, sample collections and DNA testing and matching.

39. Through financial support provided by the European Union, the sum of €500,000 has been allocated to a one-year pilot project, aimed at identifying remains in two burial sites: Mount Dajti and Balish. The objective is to carry out DNA-led identification of the remains that have already been excavated in Mount Dajti, and to excavate the site further in order to recover additional remains suspected to be there. In Balish, the aim is to begin the anthropological and archaeological excavation of the site. This pilot project is to be led by the relevant Albanian institutions, such as the Institute for Integration of the former politically persecuted and the Institute of Legal Medicine, under the guidance and mentoring of the International Commission on Missing Persons and in line with the its protocols and technical standards.

40. The Working Group was informed, however, that the launch of the pilot project remains stalled due to the pending accession of Albania to the Agreement on the Status and Functions of the International Commission on Missing Persons. The signing of the Agreement is a necessary precondition for formalizing the legal status of a Commission presence in Albania. Through its exchanges with the Institute for Integration of the former politically persecuted, the Ministry of Social Welfare and Youth and the Commission, it was made clear to the Working Group that all relevant institutions have undertaken the necessary preparatory work and will be ready to engage fully with these initiatives, as soon as the Agreement is signed and the Commission can begin operating in the country.

41. As stated in the Working Group's general comment on the right to the truth in relation to enforced disappearances, when a disappeared person is found to have died, the remains of the person should be clearly and indisputably identified, through DNA analysis or otherwise. The Working Group has stressed that the State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation.[37]

42. Access to archives is another essential precondition for ensuring the rights of victims to truth as well as justice. Article 13 (2) of the Declaration on the Protection of All Persons from Enforced Disappearance states that the competent authority should have the necessary powers and resources, including powers to compel attendance of witnesses and production of relevant documents. The Working Group has stated that the authority should also have the power to have full access to the archives of the State, and that the archives of the said authority should be preserved and made fully accessible to the public.[38] The importance of rendering public and fully accessible all archives that may contain information on the fate

[37] See A/HRC/16/48, para. 39.

[38] Ibid.

and whereabouts of disappeared persons has been underlined by the Working Group in a number of country visit reports.[17]

43. In 2015, the Albanian parliament passed Law No. 45/2015 on the right of information to the documents of the former security service of the Popular Socialistic Republic of Albania, which allowed access to the classified files of the Sigurimi State police and established a five-person authority tasked with overseeing this process. The selection of the members was delayed for several months but, in November 2016, the members of the authority were finally appointed, comprising one representative from the community of former politically persecuted persons; one from human rights organizations; one government appointee and two parliamentary appointees; all are victims or relatives of victims of the regime.

44. The authority for the opening of the Sigurimi files is now in charge of collecting, storing, managing, and processing information contained in the documents of the former Sigurimi State police. The new authority is also mandated to liaise with investigative and prosecutorial authorities, and with the institutions tasked with studying the crimes committed under the communist regime, as well as to undertake outreach and awareness-raising activities among the general public.

45. Law No. 45/2015 explicitly establishes an obligation for public authorities to make available all related documents that they hold in their archives. This is of particular importance for families searching for information on the fate and whereabouts of their missing loved ones, as well as for the entities providing support to these victims. The Working Group was informed that classified information still remains under the custody of the State Intelligence Services, the Ministry of the Interior, and the National Archives, yet the Law does not provide for the new authority to declassify the information. Regrettably, until specific regulation is put in place to establish the process of declassification by the new authority, it will be left to the relevant ministries to make this information available.[18]

46. The efforts leading to the opening of the Sigurimi files have been met with mixed reactions by various stakeholders, as some fear that the information in the files might further antagonize Albanian society, instead of promoting reconciliation. Many fear that the opening of the files will be used for political purposes, particularly in the context of upcoming elections, and simply lead to smear campaigns between political opponents. Others argue that, owing to the oppressive nature of the past regime, persons may have provided information or in some way cooperated with the police under duress, and that the opening of the files will expose them. Finally, there is the fear that many of the files were already destroyed or tampered with in the early years following the fall of the dictatorship, since it has taken so long for their opening to be authorized.

47. For the relatives of those who disappeared during the regime, however, the opening of the files provides an additional avenue for finding information on the final fate and whereabouts of their loved ones, as well as creating the possibility of obtaining a formal acknowledgment of their suffering.

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[17] See, for example, A/HRC/33/51/Add.2, para. 44; A/HRC/33/51/Add.1, para. 26 and A/HRC/27/49/Add.1, para. 29.

[18] In June 2017, the Working Group received information from the Government indicating that Decision No. 98 had been approved by the Council of Ministers on 15 February 2017. The decision is "for the transfer procedure, under the administration of the authority, of archival materials of the former state security, located in the Ministry of Defence, the Ministry of Internal Affairs, the State Intelligence Service and other public authorities". Pursuant to this decision, the authority has signed cooperation agreements with the Ministry of Internal Affairs and with the General Directorate of Archives (No. 1542, dated 18 May 2017 and No. 2953, dated 5 May 2017). The Working Group was also informed that the State Intelligence Service has started the process of submitting documents. According to the decision of the Council of Ministers, the responsibility for providing information on the former State security documents has passed to the authority and facilities have been placed at its disposal for the transmission of all documents. Also, on the basis of Law No. 45/2015, the authority has implemented legislation for information classified as State secrets, thus solving the problem of declassification of information.

48. The Working Group acknowledges the constraints that the passage of time may pose in the identification of individual victims. As reflected in its general comment on the right to the truth in relation to enforced disappearances, there is no absolute obligation of result, but there is an absolute obligation to take all the necessary steps to find the person. If, in certain cases, clarification is difficult or impossible to obtain, the State still has an obligation to investigate until it can determine by presumption the fate or whereabouts of the person.[37]

V. Justice

49. The Working Group recalls that the Declaration requires States to guarantee to victims of enforced disappearance an effective remedy that includes a thorough and impartial investigation with a view to identifying those responsible for the enforced disappearance, bringing perpetrators to justice, and imposing on them appropriate penalties. The State's responsibility to investigate and try cases of enforced disappearance continues irrespective of changes of government. Bearing in mind that, during two decades of transition from dictatorship to democracy, no criminal cases of enforced disappearance were brought before the courts, the Working Group is bound to declare that Albania has not fulfilled this obligation and there is a problem of structural impunity in relation to enforced disappearances perpetrated during the dictatorship. The Working Group has repeatedly indicated that impunity for committed enforced disappearances may be a source of new violations in the future.

50. There is a complex combination of factors leading to this lack of judicial accountability for past enforced disappearances. Their analysis goes beyond the present report, however, the Working Group wishes to emphasize a noticeable lack of public discourse and little political consideration of enforced disappearances, as manifested by the exclusion of forcibly disappeared persons and their family members from the compensation scheme for past abuses. In this discouraging environment, investigative and prosecutorial authorities take little interest in the phenomenon of enforced disappearances and there is no sense of urgency; the authorities lack professional knowledge in this area and are, consequently, reluctant to initiate investigations.

51. The Working Group is not persuaded by the justifications offered during the visit for the lack of investigations into past enforced disappearances. In the course of the meetings, some views were expressed that perpetrators of serious crimes during the dictatorship could not be investigated and tried, as they had acted in accordance with the law then in force. To put this view in legal terms, this position appears to suggest that prosecution for acts that were not considered crimes when they were carried out would contradict the principle of non-retroactivity. The Working Group recalls, firstly, that the Declaration states that no circumstances whatsoever may be invoked to justify enforced disappearance. Secondly, enforced disappearance is a single consolidated act, not a combination of isolated, unconnected facts[38] and prototypical continuous crime.[39] This means, inter alia, that the crime extends for the whole period of time when it is not complete, that is until the fate or whereabouts of the disappeared person are clearly established, irrespective of whether that person is alive or dead. Consequently, cases of enforced disappearance can, and should, be investigated and tried if the commission of the act had begun before, and continues after, it was criminalized in national law, notwithstanding the principle of non-retroactivity.

52. Furthermore, in accordance with the Declaration, States are under an obligation to investigate alleged enforced disappearances ex officio.[40] Therefore, the justification given to the Working Group for the absence of investigations, i.e. that there have been no requests from concerned individuals for the launching of an investigation, runs counter to the State's international obligations and does not justify lack of action. Albanian investigative and

[37] See A/HRC/16/48, para. 39.
[38] See A/HRC/27/49/Add.1, para. 40.
[39] See A/HRC/16/48, para. 39.
[40] Declaration on the Protection of All Persons from Enforced Disappearance, art. 13 (1).

prosecutorial authorities are duty-bound to investigate and bring cases to courts on their own motion, and they should act with a sense of urgency because of the significant amount of time elapsed since the enforced disappearances occurred. Further delay will not absolve Albania from its obligation to secure the right to justice for victims, but will make investigations and trials increasingly difficult, as victims and witnesses age and pass away. Also, in the face of the passivity of State authorities, families carry out their own investigations, thereby tampering with the would-be evidence (see para. 37 above).

53. During its visit, the Working Group received information about discoveries of grave sites and exhumations, carried out by families of disappeared persons, which were not supported by scientific examination and identification of recovered remains. Yet some relatives believe they have excavated remains of their loved ones and have reburied them (see paras. 36 and 37 above). The Working Group heard repeatedly that materials from State archives have been obtained by families through informal contacts and bribes and never returned. In this context, the Working Group welcomes the recent adoption of long-awaited legislation which will allow orderly access to the Sigurimi files, as well as a negotiated agreement with the International Commission on Missing Persons to begin methodical exhumations from identified grave sites and scientific examination of the recovered remains. It is the hope of the Working Group that these developments will help to generate the necessary momentum for immediate and vigorous judicial investigations and prosecutions. The law enforcement authorities and courts should be provided with all the necessary means to this end, and victims of enforced disappearance should be encouraged to use legal avenues and assured that their right to access to justice is not theoretical and illusory, but practical and effective, through the provision of free legal aid.

54. It is of the utmost importance that Albanian law enforcement officials, judges and lawyers representing victims, who are not familiar with conducting and participating in investigations, prosecutions and trials of crimes of enforced disappearance, are properly trained in the applicable international standards and learn about the specificity of these crimes and about investigative and judicial practices. There are particular investigatory and judicial challenges, which may relate to issues such as the routinely systemic and latent character of enforced disappearance, the need for heightened sensitivity in dealing with victims, types of evidence and methods of its collection and evaluation in investigating and trying these crimes. Owing to the nature of the offence, cases of enforced disappearance are supported by circumstantial rather than direct evidence more frequently than other criminal cases, as direct evidence is either scarce or absent. Scientific evidence, as opposed to witness testimonies, is of special importance, in particular in cases involving mortal remains.

55. A high level of professionalism, including personal integrity, and improved capacity to investigate and try alleged cases of enforced disappearance are also important: during the visit, the Working Group received extensive and consistent information indicating that some family members of those who have disappeared have not lodged requests to open investigations because of their distrust of the legal system. In particular, the Albanian judiciary is widely perceived as inefficient, not independent and sometimes linked with the fallen dictatorship. In this context, the Working Group welcomes the constitutional changes introduced unanimously by the parliament in July 2016 that pave the way for reforms in the justice sector. Among measures aimed at the depoliticization and professionalization of the judiciary is the implementation of a vetting system, with a view to removing corrupted and politically compromised judges.

VI. Reparation and memory

A. Reparation

56. Article 19 of the Declaration imposes upon States the obligation to provide reparation to the victims and their relatives in cases of enforced disappearance, and to provide them with adequate compensation. Full reparation includes compensation, satisfaction, restitution, rehabilitation and guarantees of non-repetition.

57. The information received by the Working Group indicates that the current legislation neglects aspects of restitution and rehabilitation. Compensation is reportedly limited to persons in possession of documentation certifying their status or that of their close family members and relatives as having been politically persecuted by the dictatorship. This leaves numerous families of victims of enforced disappearance outside the boundaries of the compensation scheme.

58. Relatives of disappeared persons whose bodies have not yet been found or identified are excluded from the compensation process, since they are neither listed nor recognized as victims and therefore cannot undertake even the complex procedures established for surviving political prisoners or their families or those for the families of those who have been executed. Therefore, they cannot claim any compensation for the harm suffered, both materially and psychologically.

59. It should also be noted that, in order to file a claim for compensation, survivors of political persecution or their family members reportedly have to contact as many as five public institutions to collect documentation which is already in the possession of the State. This burdensome practice is disrespectful to those who have suffered under the dictatorship. It is also regrettable that the possibility of filing a claim for compensation was restricted by specific deadlines, which has allegedly led to the exclusion of persons who otherwise would have been entitled to compensation if they had made the claims within certain periods of time. For those who are entitled, the compensation is being provided through a staggered programme, although the victims have an immediate need for these resources.

60. The Working Group is of the view that the Government should review the current compensation scheme. The right to compensation should also be extended to victims of enforced disappearance and their families who are not in possession of documentation proving their status as politically persecuted. An amended compensation scheme should include, but not be limited to, people who disappeared without trial, such as people who disappeared illegally under the law then in force, or during the pretrial stages of a criminal process, or while attempting to cross the border.

61. The evidence gathered by the Working Group indicates a deep-seated sense of frustration and injustice among the families of disappeared persons because they are not considered victims of political repression during the dictatorship period, and are therefore denied the right to seek compensation. Relatives of the victims of enforced disappearance should be recognized as victims and given the opportunity to submit their claims for compensation. The absence of mortal remains, or the absence of the names of the victims on the registers or archives of the Sigurimi, should not be used as an excuse for not considering these persons as victims of repression during the dictatorship period.

62. The Working Group further recommends that the Government of Albania address the issue of reparations in a structured and comprehensive manner, streamlining and rationalizing the current piecemeal approach. It is the understanding of the Working Group that the compensation scheme has been created under the joint responsibility of the Ministry of Justice, the Ministry of Finance and the Ministry of Social Welfare and Youth. One way of increasing the efficiency of such a mechanism could include allocating these responsibilities to a single institution, or multidisciplinary "one-stop shop", which could also be involved in other aspects of all the rights of victims of enforced disappearance.

63. The Working Group gathered evidence that no psychological support has been provided for the families of victims of enforced disappearance, including those who were born in forced labour camps and survived, with or without their parents. Given the psychological impact of enforced disappearance on survivors and surviving family members of the disappeared, the Working Group considers it urgent to adopt a tailored psychological support plan to help to address the violence and mental and psychological harm suffered by these victims. The Working Group considers that concerted action involving the associations of victims and the establishment of support structures that guarantee confidentiality and take a gender approach are now both necessary and urgent. The situation of the victims and their families requires access to specific and tailored psychological and mental health services.

64. In addition, any process of searching for places of burial, exhumation, establishment of DNA databases and identification of remains must be accompanied by psychological care for the families and relatives of victims of enforced disappearance, which would allow them to face such challenges and finally be able to mourn their loved ones.

65. The Working Group recalls that, in cases of enforced disappearance throughout the world, women are generally the front-line victims and suffer the direct impact of the disappearance in economic, social and psychological terms. Indeed, any initiative that Albania adopts in future for truth, justice and reparation, including psychological support, should be based on a gender-sensitive approach that takes account of the suffering and the harm done to women, including socially, economically and psychologically.

B. Memory

66. The Working Group stresses the importance of establishing a strategy for memory that takes into account the importance of officially preserving former detention facilities and labour camps as memorial sites and creating memorials for the recognition and rehabilitation of victims. This strategy should also aim to create awareness among new generations and work towards reconciliation within Albanian society, taking into consideration its repressive past.

67. The Working Group has taken note of initiatives to publish biographical records of certain victims of repression, particularly women. The victims might also include former political prisoners, people sentenced to forced labour in labour camps or even novelists who have published narratives based on real facts of the dictatorship. The Working Group was also able to visit places of memory, such as Bunk'Art 1 and Bunk'Art 2, which show the various repressive methods and the modes of governance and operation of the systematic repression exercised by the dictatorship at the time.

68. The Working Group welcomes, in particular, the initiative of Bunk'Art 2, which underlines the importance of people remembering their past in order to build the future. The Working Group particularly welcomes the part that traces the memory of disappeared persons executed by the regime in labour camps or political prisons or persons who attempted to cross the border, whose remains were not found or identified. The museum also provides a census of political prisons, and lists some 6,000 missing people, some with indications of where they might have been buried. The Working Group notes that this is an important step towards collective and public recognition of the repression of the dictatorship and the victims of the past and encourages Albania to continue its efforts in this regard.

69. However, the Working Group was informed that the former places of detention and labour camps are neglected, that the places thought to contain the bodies of victims are not protected by the State, and that human remains have been displaced many times without regard to the victims or their family members. The Working Group also notes the absence of any concerted measures involving the victims of repression and the families of the disappeared relating to the concept of the preservation of memory or the creation of memorials dedicated to disappeared persons, whether at national level or in the places where the bodies of the victims of enforced disappearance are thought to be buried. Such measures would pay tribute to the victims and their families and publicly recognize the harm suffered by them; such initiatives are part of their rehabilitation and would serve as a place of memory for survivors in remembrance of their loved ones. These initiatives would also represent a recognition by the State and the community as a whole of its painful past, and form part of non-repetition measures.

70. The Working Group highlights the importance of protecting detention facilities and labour camps that operated during the dictatorship period, as well as places suspected of containing the remains of victims of enforced disappearance; engaging with victims and civil society associations in order to transform these sites into places of memory and reflection, and provide them with the necessary financial and human resources, within the framework of a strategy of memory developed in concert with the victims.

VII. Conclusions

71. Albania has still to come to terms with the gross and systemic violations of human rights committed by the dictatorship. More than 25 years after the collapse of the regime in 1991, the past remains omnipresent and the wounds remain deep, but go unnoticed. Albania is not yet able to face this painful past that has affected a large part of its population. However, it is still not too late for healing and reconciliation.

72. The continued reluctance to look into the past will hinder the capacity of Albania to move forward into the very promising future it is striving to build for itself. Current positive initiatives aimed at good governance, institution-building and the rule of law cannot and will not reach their full potential if restrained by the burden of the country's painful past. The State should encourage and facilitate a national public debate on the legacy of the repressive past and ways of collectively overcoming its painful consequences. Such a debate is especially important in a society lacking trust in State institutions and the fragmented State-sponsored initiatives set up to deal with the past.

73. It is most important that State authorities in consultation with relevant stakeholders should develop, propose and implement a comprehensive policy to address past abuses, including enforced disappearances. This policy should encompass the victims' right to truth, justice, reparation and remembrance.

74. While no new cases of enforced disappearance are currently being reported to the Working Group, and legislative steps have been taken to prevent the occurrence of enforced disappearance in the future, there is a lack of recognition of a large number of past cases. The slow progress in a structured search for all those who disappeared during the dictatorship, the general impunity for perpetrators of enforced disappearance, the paucity of efforts to memorialize past abuses, including enforced disappearances, and the lack of a comprehensive reparations scheme are all a serious source of concern for the Working Group.

75. There is an urgent need to engage in a process of investigation, exhumation and identification of the remains of disappeared persons so that they can be handed over to their families through a mapping of the places thought to have contained the remains during the dictatorship period, and to provide this process with all the financial and human resources required to ensure its success.

76. The Working Group stresses that enforced disappearance cannot be considered as an issue of the past. It is a continuous crime which persists until the fate and whereabouts of a forcibly disappeared person are clarified. The lack of judicial enquiries and continuing impunity for cases of enforced disappearance are not only a violation of the rights to truth and justice of the victims, but may also be a source of new violations in the future.

VIII. Recommendations

77. In the light of the above, the Working Group formulates the following recommendations.

General

78. The Working Group recommends that the Government of Albania:

(a) Establish a mechanism dedicated to dealing with the prejudices resulting from the political repression of the past, on the basis of a global approach instead of fragmented measures taken by several institutions;

(b) Recognize the enforced disappearances of the past in order to guarantee the rights of victims and families to truth, justice, reparation and memory and

guarantee non-repetition, through an appropriate mechanism in concert with victims and associations.

Legislative and institutional framework

79. **The Working Group recommends that the Government of Albania:**

(a) **Expand the current legislative framework in order to comprehensively secure the rights of both society and victims of enforced disappearance to know the truth about what happened during the dictatorship, the right of families to have the remains of their loved ones found, identified and returned to them, the right to access to justice, the right to reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, and the right to memory;**

(b) **Consolidate the institutional framework for addressing the enforced disappearances of the past; consider establishing a broadly mandated, multidisciplinary, "one-stop shop" type of institution to secure the rights of victims and to achieve national reconciliation; such an institution should, inter alia, be responsible for receiving and verifying complaints of enforced disappearance; keep a national register of disappeared persons and identified burial sites;**

(c) **Grant the status of victim of enforced disappearance to family members of persons who disappeared or whose remains disappeared during acts of repression, whether this was a result of political persecution or not; as an immediate step, amend the existing mechanism to compensate for the suffering endured by Albanians under the authoritarian regime by expressly including victims of enforced disappearance as beneficiaries, without the requirement that they must provide evidence of political persecution;**

(d) **Introduce in relevant legislation the possibility of obtaining a certificate of absence due to enforced disappearance to define the legal status of forcibly disappeared persons and to guarantee pertinent rights to their family members;**

(e) **Expressly provide that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied.**

Truth

80. **The Working Group recommends that the Government of Albania:**

(a) **Take firm and decisive steps for the swift adoption of a comprehensive policy to search, locate and identify the remains of persons executed during the dictatorship, including:**

(i) **Establishing a disaggregated register with the exact or approximate number of disappeared persons;**

(ii) **Identifying locations of potential burial sites and establishing centralized mapping for all these locations;**

(iii) **Establishing and enforcing standard operating procedures for the proper preservation of currently identified burial sites and of any samples found therein;**

(iv) **Opening investigations at some of the identified burial sites;**

(v) **Launching the creation of a national DNA bank to which families can contribute samples, and raising awareness among families about its use and purpose;**

(vi) **Ensuring annual budgetary allocations for the above-mentioned endeavours;**

(b) **Finalize the accession of Albania to the Agreement on the Status and Functions of the International Commission on Missing Persons, and swiftly take any other legal and policy measures required to enable the immediate launch of the Commission's project in Albania;**

(c) **Swiftly promulgate the necessary regulation to frame the practical functioning of the new authority for the opening of the Sigurimi files, and ensure the allocation of adequate financial and human resources in order to maximize its results;**

(d) **Take immediate measures to preserve all existing records and documentation relating to the human rights violations of the past, including enforced disappearances, regardless of the government institution holding them.**

Justice

81. **The Working Group recommends that the Government of Albania:**

(a) **Communicate to law enforcement institutions a sense of urgency and encourage them to initiate ex officio investigations into cases of enforced disappearance, regardless of the time that has elapsed since these occurred, and provide them with all the necessary means to this end;**

(b) **Without delay, organize professional training for law enforcement officials, judges and lawyers representing victims relating to applicable international standards, specific characteristics of crimes of enforced disappearance and corresponding investigative and judicial practices, including the need for heightened sensitivity in dealing with victims;**

(c) **Provide victims of enforced disappearance with legal avenues to obtain truth and justice, and take specific measures to encourage the use of those avenues in preference to private inquiries or exhumations; to this end, the State should make available free legal aid and promote the active participation of victims in official investigations and judicial proceedings;**

(d) **Carry out immediate judicial reforms as envisioned by recently adopted constitutional and legislative provisions, including implementation of the vetting mechanism.**

Reparation and memory

82. **The Working Group recommends that the Government of Albania:**

(a) **Develop a reparation mechanism tailored to the nature of the violation, namely enforced disappearance, which guarantees the right of victims and their families to compensation, restitution, rehabilitation and memory — this mechanism should consider the families of the disappeared as victims just like the direct victims of other serious human rights violations perpetrated under the dictatorship;**

(b) **Offer a new opportunity for reparation to families of victims of enforced disappearance who were excluded under the initial deadline for surviving victims;**

(c) **Reparation should also take into account medical, psychological and moral support for the harm suffered, as well as support for families during the search for and exhumation, identification and recovery of remains, in addition to compensation;**

(d) **Establish a strategy of memory based on the identification of places of reflection for families and places of remembrance for Albania as a whole;**

(c) **Adopt a participatory approach with the families of victims and associations working in the field of memory for the design, implementation and celebration of memory;**

(f) **Provide the necessary budgets for memory projects and ensure their sustainability and visibility.**

83. **The Working Group invites the Government of Albania to submit within 90 days of the date of the presentation of the present report to the Human Rights Council a timetable showing the steps that it will take to implement the present recommendations.**